

(23,049)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 186.

THE TEXAS AND PACIFIC RAILWAY COMPANY,  
APPELLANT,

vs.

THE RAILROAD COMMISSION OF LOUISIANA AND THE  
INDIVIDUAL MEMBERS THEREOF.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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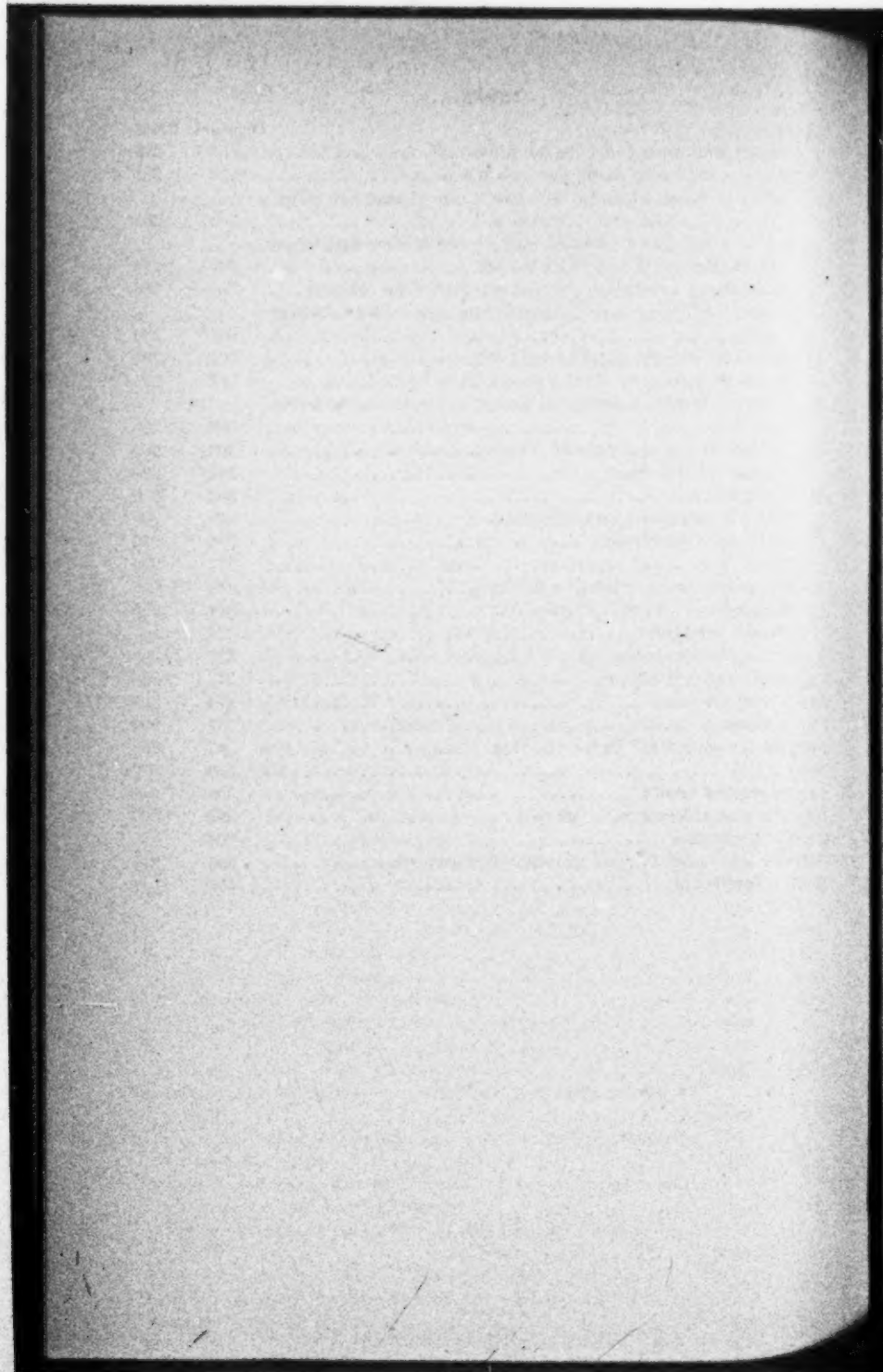
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*Transcript of Record.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 2174.

THE TEXAS & PACIFIC RAILWAY COMPANY, Appellant,  
versus

THE RAILROAD COMMISSION OF LOUISIANA et al., Appellees.

Appeal from the Circuit Court of the United States for the Eastern  
District of Louisiana.

[Original Record Filed Jan. 31, 1911.]

U. S. Circuit Court of Appeals. Filed Feb. 18, 1911. Charles H.  
Lednum, Clerk.

UNITED STATES OF AMERICA,  
*Fifth Judicial Circuit:*

Pleas and Proceedings had and done at a Regular Term of the  
United States Circuit Court of Appeals for the Fifth Circuit,  
begun on the third Monday in November, 1910, and on the third  
Monday in November, 1911, at New Orleans, Louisiana, before  
the Honorable A. P. McCormick, and the Honorable David D.  
Shelby, Circuit Judges, and the Honorable William T. Newinan,  
District Judge.

No. 2174.

THE TEXAS & PACIFIC RAILWAY COMPANY, Appellant,  
versus

THE RAILROAD COMMISSION OF LOUISIANA et al., Appellees.

Be it remembered, That heretofore, to-wit: on the 31st day of  
January, 1911, a transcript of the above styled cause from the Cir-  
cuit Court of the United States for the Eastern District of Louisiana,  
was filed in the office of the Clerk of said United States Circuit Court  
of Appeals for the Fifth Circuit, in the words and figures follow-  
ing, to-wit:

## 1 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division.

No. 56.

THE TEXAS AND PACIFIC RAILWAY COMPANY, Appellant,  
VERSUS  
RAILROAD COMMISSION OF LOUISIANA et al., Appellees.

Messrs. Howe, Fenner, Spencer & Cocke and Bernard J. Mayer, for Appellant.

Messrs. Walter Guion, Attorney General of Louisiana, and T. M. Miller, for Appellees.

Appeal from the Circuit Court of the United States, Eastern District of Louisiana, Baton Rouge Division, to the United States Circuit Court of Appeals for the Fifth Circuit, Returnable within Thirty (30) Days from the Seventeenth (17th) Day of December, A. D. 1910, at the City of New Orleans, State of Louisiana.

Return Day of Appeal Extended to February First (1st), A. D. 1911, by the Honorable United States Circuit Court of Appeals for the Fifth Circuit.

*Transcript of Appeal.*

Bill of Complaint.

Filed January 30th, 1906.

In the United States Circuit Court, Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division.

In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY  
VS.  
RAILROAD COMMISSION OF LOUISIANA et al.

To the Honorable the Judges of the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division:

The Texas & Pacific Railway Company, a corporation created by and existing under the laws of the United States, as more fully hereinafter set forth, brings this its bill of complaint against the Railroad Commission of Louisiana, and against C. L. de Fuentes, William L. Foster and Overton Cade, and thereupon your orator complains and says:

First. Your orator is a corporation created by and existing under

and by virtue of certain Acts of Congress of the United States, to-wit:

1st. An Act entitled, "An Act to incorporate the Texas & Pacific Railroad Company, and to aid in the construction of its road and for other purposes," approved March 3rd, 1871, being Chapter 122 of the public laws of the United States of 1871.

2nd. An Act supplemental to the foregoing Act, approved May 2nd, 1872, being Chapter 132 of the public laws of the United States of 1872.

3rd. An Act supplemental to said Act of 1871, approved March 3rd, 1873, being Chapter 257 of the public laws of the United States of the year 1873.

4th. An Act supplemental to the said Act of 1871, approved June 22nd, 1874, being Chapter 406 of the public laws of the United States of the year 1874.

That your orator is a Federal corporation duly chartered and existing under and by virtue of the Acts of Congress, aforesaid, with its managing or operating offices situated in the City and County of Dallas, State of Texas, and its principal or executive offices in the City of New York, State of New York.

Second. The defendant, the Railroad Commission of Louisiana, is a body created by and organized under Article 283 of the Constitution of the State of Louisiana, adopted May 12th, 1898, and is in law a citizen of the State of Louisiana, and has its domicile fixed by law in the City of Baton Rouge within the Baton Rouge Division of the Eastern District of Louisiana. That said C. L. de Fuentes, William L. Foster and Overton Cade are members of and compose said Railroad Commission of Louisiana, and are each and all citizens of the State of Louisiana, and are under the provisions of the Constitution of Louisiana, sueable in this cause in the Baton Rouge Division of the Eastern District of Louisiana; and that said parties derive all power, authority and character as such Railroad Commission, in respect to the matters hereinafter complained of, from and under the Constitution of the State of Louisiana, adopted May 12th, 1898.

Third. That this cause is one of a civil nature, arising under the Constitution and Laws of the United States, and the matter in dispute herein exceeds two thousand dollars, exclusive of interest and costs.

Fourth. Your orator is a railroad corporation organized and existing under the laws aforesaid, and owns and operates a line of railway from the City of New Orleans in the State of Louisiana, to the City of El Paso in the State of Texas, and passing through the Cities of Alexandria and Shreveport in the State of Louisiana, and the Cities of Marshall, Texarkana, Dallas, Fort Worth and El Paso in the State of Texas; and also owns and operates in the State of Louisiana as a part of its railroad system a number of branch line railroads, to-wit:

1st. A branch line railroad commencing at or near the Town of Donaldsonville, Louisiana, and running in a southerly direction



along the eastern bank of Bayou Lafourche to or near the Town of Thibodaux, a distance of about 28 miles.

2nd. A branch line railroad commencing at or near Geary Station, Louisiana, and running in a southerly [southerly] direction  
4 along the west bank of said Bayou Lafourche to or near the Town of Napoleonville, Louisiana, a distance of about 15 miles.

3rd. A branch line railroad commencing at or near the Town of Plaquemine, Louisiana, and running along the east bank of Bayou Plaquemine in a southern direction to the Town of Indian Village, a distance of about 7 miles.

4th. A branch line of railroad commencing at or near Baton Rouge Junction Station, on the main line of your orator, in the Parish of West Baton Rouge, and running thence in a northerly [northerly] direction along the west bank of the Mississippi River, through the Parishes of West Baton Rouge, Pointe Coupee and Concordia, to or near the Town of Ferriday in said Concordia Parish, a distance of about 110 miles.

5th. A branch line of railroad commencing at or near the Town of Bunkie in the Parish of Avoyelles, Louisiana, and running in an easterly direction to the Town of Simmsport, on the Atchafalaya River in said parish, and thence in a southerly [southerly] direction along the west bank of the Atchafalaya River to the Town of Melville in the Parish of St. Landry; also with a branch running in a northerly [northerly] direction to Marksville in said Avoyelles Parish, said branch line railroad having a total length of about 50 miles.

6th. A branch line of railroad commencing at Cypress Station on the main line of your orator in the Parish of Natchitoches, and thence running in a northwesterly direction along the west bank of the Red River to or near the City of Shreveport, Louisiana, a distance of about 81 miles.

7th. A branch line of railroad commencing at or near the City of Shreveport, and running in a southwesterly [southwesterly] direction to the Town of Reisor, a distance of about 10 miles.

8th. A branch line of railroad commencing at or near the Town of Shreveport, and running in a northwesterly [northwesterly] direction to the city of Texarkana in the State of Texas, a distance of about 72 miles.

All of which main line and branch line of railroad are owned, used, operated and controlled by your orator and constitute  
5 the Texas & Pacific Railway Company, the entire mileage so owned, used, operated and controlled being 1,825.65 miles, and of which mileage about 650 miles are situated in the State of Louisiana; and your orator is engaged in the business of transporting freight, express and passengers for hire over its said lines of railroad, and is in law a common carrier of such freight, express and passengers.

Fifth. By Article 283 of the Constitution of the State of Louisiana, adopted May 12th, 1898, a railroad, express, telephone and telegraph, steamboat and other water craft and sleeping car commission

was created, to be composed of three members to be elected from certain designated districts to be known as the Railroad Commission of Louisiana, the domicile of which said commission was established at Baton Rouge, Louisiana. And by Article 284 of said Constitution, power and authority was vested in said commission, and it was thereby made its duty to adopt, change or make reasonable and just rates, charges and regulations to govern and regulate railroad, steamboat and other water craft, and sleeping car, freight and passenger tariffs and service, express rates and telephone and telegraph charges; to correct abuses and to prevent unjust discrimination and extortions in the rates for same on the different railroad, steamboat and other water craft, sleeping car, freight and passenger service, telephone and telegraph lines of its state, and to prevent such companies from charging any greater compensation in the aggregate for the like kind of property, passengers or messages for a shorter than a longer distance over the same lines, unless authorized by said commission to do in such cases. And said commission was further charged with other duties relative to the service and accommodations to be furnished to the public by such companies, and was given power to enforce its said rates, charges and regulations by having certain penalties in said constitution fixed, inflicted through the proper courts having jurisdiction.

Sixth. That said C. L. de Fuentes, William L. Foster and Overton Cade were duly elected and qualified, and are now acting as and comprising said Railroad Commission of Louisiana, so created by said articles of the constitution, and are exercising and claiming the right to exercise the powers and functions conferred or purporting to be conferred by said constitution upon said Railroad Commission.

6 Seventh. Prior to December 12th, 1905, your orator had promulgated and had in force and effect a tariff of rates on cotton-seed and cotton-seed products moving between points in the State of Louisiana, that was just, fair and reasonable, and said tariff of rates had, prior to said date been filed with said Railroad Commission, and had by them been approved and adopted as the official rates of said commission, and, thereafter, said commission on a hearing had on May 22nd, 1905, declared that said tariff of rates was fair, just and reasonable. But, notwithstanding this fact and notwithstanding the fact that no change in the conditions surrounding the movement of this traffic had taken place justifying or requiring any change in said tariff of rates, said commission, did on the 4th day of December, 1905, issue its notice to your orator in words and figures as follows, to-wit:

"Gentlemen:

"In accordance with the suggestions made at the November session, the commission proposes the enclosed schedule of mileage rates to apply on cotton-seed, car loads, between all points on the Texas and Pacific Railway in Louisiana.

"It is the intention that the proposed rates shall cancel all special rates now in effect, thereby placing all mills on this line on an equal basis.

"The commission hopes and expects that all parties desiring a hearing on this question will be present at Baton Rouge on December 12, 1905, at 10:00 A. M., in order to fully discuss this proposition.

"By order of the commission.

"Respectfully,  
(Signed)

"W. M. BARROW,  
*Secretary.*"

That attached to said notice was a copy of the proposed rates on cotton-seed which the commission proposed to promulgate under and by virtue of said notice. That said notice in no way mentioned or indicated that any change would be made in the rate upon cotton-seed products. That prior to December 4th, 1905, application had been made to said commission by the Longbridge Cotton Oil Company for a revision of the rates on cotton-seed and cotton-seed products from and to points adjacent to their mill, and this matter had been assigned for hearing on November 9th, 1905. That, before said hearing was had, the commission promulgated the notice above set forth as its notice for a revision and change in the

7 rate on cotton-seed in lieu of any proposed changes suggested in said application of the Longbridge Cotton Oil Company. That said commission's notice of December 4th, 1905, made no mention of any change, whatsoever, in the rates, rules and regulations governing the movement of cotton-seed products. That, on December 13th, 1905, said commissions promulgated and issued its Order No. 484, putting in effect a mileage rate on cotton-seed and cotton-seed products (said rates to become effective December 24th, 1905), a copy of which order is hereto attached and marked "Exhibit A," and made a part of this bill of complaint, as fully as if set forth herein. That, subsequently, this complainant filed its application for a rehearing as to said rates and in pursuance of said application a rehearing was granted by said Railroad Commission of Louisiana, and its said tariff of rates was suspended; a copy of which order suspending said rates is hereto attached and marked "Exhibit B," and in the same manner made a part of this bill of complaint. That, subsequently, on January 9th, 1906, said commission set aside its order granting a rehearing upon said rates, and put its former schedule in full force and effect. Said order of said commission is hereto attached, marked "Exhibit C," and in the same manner made a part of this bill of complaint. By the terms of said order, said tariff of rates, theretofore, promulgated on December 13th, 1905, was made effective on and after February 1st, 1906.

Eighth. Your orator avers that cotton-seed and cotton-seed products are among the chief commodities handled by it within the State of Louisiana, and from which it derives to a great extent its revenues. That, for the year ending December 31st, 1905, it had transported between points within the State of Louisiana, 114,009,906 pounds thereof, from which it had derived under its said tariffs in effect the sum of \$118,772.67. That its former tariffs were just, fair and reasonable and were not in any wise excessive or discrimina-

tive, and your orator received for the transportation of same only a fair and reasonable return for the services rendered. That, under the tariff of rates promulgated and sought to be enforced by said Railroad Commission of Louisiana hereinbefore set out, your orator will be required to handle and move said commodities at an unreasonable and an unjust and unremunerative rate, and at a rate that will not afford to your orator a reasonable return for the services rendered in transporting said commodities; and in using the tonnage moved by your orator for the year ending, December 8 31st, 1905, as a basis, it will mean a loss to your orator in the sum of \$28,095.07, or a reduction equivalent to about 25 per cent upon the rates which were in effect prior to the promulgation by said Railroad Commission of its said tariff effective, February 1st, 1906; and if your orator is required to put said tariff in effect it will deprive your orator of more than one-fourth of its just and reasonable revenues for the handling of said commodities, and prevent it from earning a reasonable return for its services in moving said commodities, and will deprive your orator, to that extent, of its property without due process of law. That your orator has every reason to believe, and believing, avers that its tonnage in these commodities in future will amount to, if it does not exceed what it has been in the past and the effect of said reduction will be to deprive your orator in future of even a greater amount of its revenues than the amount hereinabove stated. For the reasons hereinabove set out, your orator states that said proposed tariff is unreasonable and unjust, and is not such as said Railroad Commission is by law authorized to make and enforce, and if made and enforced it will deprive your orator of its just revenues from the movement of these commodities, and without due compensation for the service in handling same.

Ninth. It further avers that in addition to reducing your orator's revenue in the proportion above set forth, said tariff makes a reduction in the distance mileage rate, theretofore, in effect by your orator upon said commodities all the way from 33½ to 50 per cent, and in the event that the movement of such commodities in future should be greater for the short distances than heretofore, the reduction in your orator's revenue would be much greater than that hereinbefore set out. That to a large extent the bulk of the cotton-seed movement is practically limited to a haul of less than one hundred miles, and the percentage of reduction made is in many instances about 40 per cent. Your orator avers that all of its tariffs for the handling of all commodities between points in the State of Louisiana have already been reduced as low as possible consistent with earning a fair return for the operation of its road, and upon the capital invested in its said property, and that the financial and physical condition of your orator's property is such that it cannot afford to have its revenues reduced any further without seriously impairing the ability of your orator to furnish that character of service demanded by the public in the operation of its property, and also to enable your orator to 9 meet its just fixed charges and operating expenses. That only with the most economical management in the operation of its properties, your orator is now enabled to put necessary betterments



and improvements upon its said property and to meet its fixed charges and operating expenses, and the effect of making such a radical reduction as is proposed by said Railroad Commission in said cotton tariff, would have the effect of seriously impairing your orator's ability to perform its services to the public, and that said proposed tariff on cotton-seed and cotton-seed products is unjust and unreasonable in itself, and is not justified by any conditions either surrounding the movement of said tariff, itself, or by the financial or physical condition of your orator's properties.

Tenth. Your orator avers that by said Article 285 of said Constitution of Louisiana, it is provided, among other things, that if any railroad, express, telephone, telegraph, steamboat or other water craft or sleeping car company, or any other party in interest, be dissatisfied with the decision or fixing of any rate, classification, rules, charges, order, act or regulation adopted by the commission, such party may file a petition setting forth the cause of objection to such act, rule, rate, charge, classification or order, or to either or all of them in a court of competent jurisdiction at the domicile of the commission, against said commission as defendant. And by Article 286 of said constitution it is provided, as follows:

"If any railroad, express, telephone, telegraph, steamboat or other water craft, or sleeping car company subject hereto, directly or indirectly, or by any special rate, rebate or other advice, shall intentionally charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered by it, than it charges, demands or receives from any other person, firm or corporation for doing a like and contemporaneous service, or shall violate any of the rates, charges, orders or decisions of said commission, such railroad, steamboat or other water craft, express, telegraph, telephone or other company shall forfeit and pay to the state not less than one hundred dollars, nor more than five thousand dollars to be recovered before any court of competent jurisdiction, at the suit of said commission at the domicile of the commission or of the company, or at the place where the complaint arises, at the option

of the commission. Provided, that whenever any rate, order, charge, rule or regulation of the commission is contested in court, as provided for in Article 285 of the Constitution, no fine or penalty for disobedience thereto or disregard thereof shall be incurred until after said contestation shall have been finally decided by the courts, and then only for acts subsequently committed.

"The power of the commission shall effect only the transportation of passengers, freight, express matter and telegraph and telephone messages between points within this state, and the use of such instruments within this state."

And your orator avers that it is dissatisfied with such tariff rates promulgated by said commission on December 13th, 1905, and made effective February 1st, 1906, and desires and does by this bill of complaint, avail itself of its constitutional right to contest the same as unreasonable and unjust.

Your orator further avers that said tariff of rates promulgated by the Railroad Commission and herein complained of, is illegal and



void and is not such a tariff of rates as said Railroad Commission is by law authorized to make and enforce, and your orator is entitled to have same so declared by this Court, and to have an injunction against the defendants restraining and prohibiting them from enforcing same against your orator.

In consideration whereof and for as much as your orator is remediless in the premises under the rules of the common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable, to the end, therefore, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth as fully and particularly as if the same were herein again repeated, and they were thereunto interrogated, and that after due proceedings had, an injunction may issue by the Court restraining and enjoining the said Railroad Commission of Louisiana, the said C. L. de Fuentes, William L. Foster and Overton Cade from putting or continuing in force or effect, so far as your orator is concerned, the said tariff of rates promulgated on December 13th, 1905, and made effective February 1st, 1906, and designated as Order No. 484, and restraining the said Railroad Commission and the said C. L. de Fuentes, William L. Foster and Overton Cade and each of them from instituting or authorizing or directing any others to prosecute or institute any suit or suits, action or actions against your orator for the recovery of any penalties under and by virtue

11 of any of the provisions of the Constitution of Louisiana herein recited by reason of the failure of your orator and the officers and agents of your orator or either of them to put into effect or charge rates specified in said Order No. 484; and that said tariff of rates promulgated December 13th, 1905, effective February 1st 1906, evidenced by said Commission Order No. 484, be canceled and declared to be null and void and of no effect by the decree of this Court, and that your orator may have such further and other relief as this case may require, as well as all costs, may it please your Honors to grant unto your orator a writ or writs of subpoena to be issued out of and under the seal of this Honorable Court, and directed to said defendants, the Railroad Commission of Louisiana, C. L. de Fuentes, William L. Foster and Overton Cade, commanding said defendants and each of them to appear in this Court at some certain date to be therein named to answer in the premises, but not under oath—answer under oath being hereby expressly waived—and to abide by and perform such decrees and orders as may be herein rendered; and your orator prays for such other or further relief as may be proper in the premises.

THE TEXAS & PACIFIC RAILROAD  
COMPANY,

By ———, *Its Solicitors.*

T. J. FREEMAN, *Of Counsel.*

STATE OF LOUISIANA,

*Parish of Orleans, ss:*

William F. Braggins being duly sworn, deposes and says that he is the division freight agent of The Texas & Pacific Railway

Company, the complainant in the above entitled suit, and as such, is an agent of the complainant, and is authorized, on its behalf, to make such affidavit; that he has read the foregoing bill of complaint and knows the contents thereof, and that same is true of his own knowledge, except as to matters therein stated to be upon information and belief, and as to such matters he believes it to be true.

Sworn to and subscribed before me this — day of January, 1906.

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## EXHIBIT A.

Railroad Commission of Louisiana.

Order No. 484.

No. 586.

Longbridge Cotton Oil Company

vs.

Texas and Pacific Railway Company.

*Mileage Rates on Cotton-seed and Cotton-seed Products, Heard November 9, 1905; December 12, 1905.*

The commission having under consideration the record in this case, and after full hearing and investigation, finding the rates on cotton-seed and cotton-seed products on the Texas and Pacific Railway in Louisiana to be excessively high, as compared with the rates on other railways in Louisiana and in other states, and in some instances discriminative and unjust to certain localities, and believing the best interests of the general public will be subserved by the establishment of a uniform mileage rate on the commodities named, it is therefore ordered that the following rates be and are hereby established on cotton-seed and cotton-seed products to be transported between points on the said railway in Louisiana:

	Cotton-seed, carloads, min. wt. 24,000 lbs.	All Cotton seed products, except oil and tank bottoms, min. 24,000 lbs.	Oil and tank bottoms min. wt. in bbls. 30,000 in tanks, 47,000 lbs.
10 miles and less.....	3	3	4
20 miles and over 10....	4	3.5	5
30 miles and over 20....	4.5	3.75	6
40 miles and over 30....	5	4	7
50 miles and over 40....	6	4.25	7.5
60 miles and over 50....	7	4.5	8
70 miles and over 60....	7.5	4.75	8.5
80 miles and over 70....	7.5	5	9

90 miles and over 80....	8	5.25	9.5
100 miles and over 90....	8.5	5.5	10
110 miles and over 100....	9	5.75	10.5
120 miles and over 110....	9	6	11
130 miles and over 120....	9.5	6.25	11.5
140 miles and over 130....	9.5	6.5	12
150 miles and over 140....	10	6.75	12.5
160 miles and over 150....	11	7	13
170 miles and over 160....	12	7.25	13.5
180 miles and over 170....	13	7.5	14
190 miles and over 180....	14	7.75	14.5
200 miles and over 190....	14.5	8	15
210 miles and over 200....	15	8	15.5
225 miles and over 210....	15	8	16
Over 225 miles.....	15	8	17

The rate proposed will apply as follows:

On cotton-seed, straight carloads.

On cotton-seed cake and meal, straight or mixed carloads.

On cotton-seed ashes, straight carloads.

On cotton-seed hulls, straight carloads.

On cotton-seed oil and tank bottoms, in barrels, straight or mixed carloads.

All rates previously in effect on cotton-seed and cotton-seed products, between points on the Texas and Pacific Railway in Louisiana are hereby canceled.

The above rates on cotton-seed will apply when 50 per cent. of the products of the seed hauled in, other than linters, hulls and ashes are shipped out via the Texas and Pacific Railway. Otherwise, the rates on cotton-seed will be three cents per one hundred pounds higher. This applies except on seed shipped into New Orleans or Gretna.

Effective, December 24, 1905, by order of the Commission.

Baton Rouge, Louisiana, December 13, 1905.

[SEAL.]

C. L. DE FUENTES, *Chairman*.  
 Commissioners, W. L. FOSTER,  
 OVERTON CADE.  
 W. M. BARROW, *Secretary*.

### To Whom It May Concern:

In pursuance of a rehearing granted by the Railroad Commission of Louisiana on its Order No. 484, entered December 13, 1905, es-

tablishing rates on cotton-seed and cotton-seed products between points on the Texas and Pacific Railway in Louisiana, notice is hereby given that the parties interested will be granted a further hearing on the said order, at Baton Rouge, Louisiana, in the office of the commission, at 10:00 A. M., on Monday, January 8, 1906.

The rates named in the said Order No. 484 are the rates that will be considered for final adoption.

By order of the Commission, December 29, 1905, Baton Rouge, Louisiana.

W. M. BARROW, *Secretary*.

### EXHIBIT C.

Order No. 489.

(Affirming Order No. 484.)

No. 586.

Longbridge Cotton Oil Company

VS.

TEXAS AND PACIFIC RAILWAY COMPANY.

Rates on Cotton-seed and Cotton-seed Products.

Rehearing, January 8, 1906.

The commission having granted a rehearing in this case at Baton Rouge, Louisiana, January 8, 1906, and finding no new facts introduced to change their views as expressed in Order No. 484, issued December 13, 1905, it is now ordered that the rates on cotton-seed and cotton-seed products as promulgated in the Commission's Order No. 484, issued December 13, 1905, be and are hereby affirmed, the rates to become effective on and after February 1st, 1906.

15 By order of the Commission, Baton Rouge, Louisiana, January 9, 1906.

[SEAL.]

C. L. DE FUENTES, *Chairman*.

Commissioners, W. L. FOSTER.

OVERTON CADE.

W. M. BARROW, *Secretary*.

### Notice of Filing Bill of Complaint.

Extract from the Chancery Order Book.

TUESDAY, January 30, 1906.

No. 56.

B. R. D.

THE TEXAS & PACIFIC RAILWAY COMPANY

VS.

RAILROAD COMMISSION OF LOUISIANA et al.

The Texas & Pacific Railway Company through its solicitors, Howe, Spencer & Cocke, has this day filed a bill of complaint against



the Railroad Commission of Louisiana and against C. L. de Fuentes, William L. Foster and Overton Cade.

\* \* \* \* \*

*Notice of Appearance of Defendants.*

Extract from the Chancery Order Book.

MONDAY, March 5, 1906.

No. 56.

B. R. D.

THE TEXAS & PACIFIC RAILWAY COMPANY

VS.

RAILROAD COMMISSION OF LOUISIANA et al.

Now comes Walter Guion, attorney general, and enters his appearance as solicitor for the Railroad Commission of Louisiana one of the defendants herein.

16

*Answer.*

Filed March 27th, 1906.

In the Circuit Court of the United States for the Eastern District of Louisiana.

In Equity.

TEXAS & PACIFIC RAILWAY COMPANY et al.

VS.

THE RAILROAD COMMISSION OF LOUISIANA et al.

The joint and several answer of the Railroad Commission of Louisiana, C. L. De Fuentes, William L. Foster and Overton Cade, defendants in the bill of complaint, exhibited against them in this Honorable Court by the Texas & Pacific Railway Company, the complainant.

These respondents now and at all times hereafter reserving unto themselves the benefit of any and all exceptions that can or may be taken to said bill of complaint on account of its many errors, insufficiencies and uncertainties for answer thereto and to such parts thereof as they are advised, it is material for them to answer unto, answering say:

1st. They admit all and singular the allegations contained in the first, second, third, fourth, fifth and sixth paragraphs of said bill of complaint and the several subdivisions thereof as well as all those contained in that part of the tenth paragraph of said bill of complaint, in respect to the right of action provided by Article 285 of the Constitution of the State of Louisiana.



2nd. Respondents deny that complainant, prior to December 12, 1905, had promulgated and had in force and effect a tariff of rates on cotton-seed and cotton-seed products moving between points in the State of Louisiana, that was just, fair and reasonable, but on the contrary, they aver that while said complainant did have, in effect, a tariff of rates on said articles prior to that date which had been filed with the defendant, Railroad Commission, and adopted in the absence of any complaint, the said tariff, as said commission subsequently held, was unjust, unfair, excessive and unreasonable, and respondents deny most emphatically that on a hearing had on May 22, 1905, or at any other time, the said commission declared said

17 tariff of rates was fair, just and reasonable; and respondents file herewith, as part of this answer, marked "Exhibit No. 1," a true copy of the only order made by it pursuant to any hearing had before said commission on May 22, 1905; and they aver that in and by said order which was made on the complaint of the Standard Cotton-Seed Oil Company, Limited, against said complainant and a number of other cotton-seed carrying roads, the defendant, commission, did not pass upon the reasonable vel non of complainant's said tariff, but merely considered that complaints against rates from or to any locality should be adjusted as they should arise and dismiss the said petition, because it then appeared that the adoption of new rates proposed by the commission would disorganize the industries involved.

3rd. Respondents submit to this Honorable Court that it is wholly immaterial that the notice sent out by the defendant, commission, to complainant, on December 4, 1905, in no way indicated or mentioned that any change would be made in the rate upon cotton-seed products, if, as a matter of fact, the then existing rate of complainant was unjust, unreasonable and required revision, especially as a full hearing was accorded to said complainant respecting the rate so to be fixed and which is now complained of.

And respondents aver that before adopting and promulgating its Order No. 484, made "Exhibit A," to complainant's bill, the fullest opportunity was given by the defendant commission to said complainant to establish its injustice which it utterly failed to do.

4th. Further answering, respondents say that while they admit that a rehearing or further hearing was granted to complainant on December 29, 1905, as shown by Exhibit "B" to its bill of complaint, they deny that said order was set aside, and aver the truth to be that while said complainant was given full opportunity to make any further showing it could against the fairness, justice and reasonableness of the schedule of rates, so adopted and suspended on January 8, 1906, it failed utterly to produce any evidence to justify any change and, accordingly, the defendant commission on January 9, 1906, entered the order, made Exhibit "C" to complainant's bill affirming said Order No. 484.

Further answering, respondents say that while it may be true that cotton-seed and cotton-seed products are among the chief commodities handled by complainant within the State of Louisiana, they can

18 neither admit nor deny the allegations contained in the 8th paragraph of said bill of complaint, that for the year ending December 31, 1905, it had transported between points within the State of Louisiana, 114,009,906 pounds thereof, from which it had derived under its tariffs in effect \$118,772.67; but, however, that may be respondents deny that the complainant's former tariffs upon said articles were just, fair and reasonable, and deny that the same were not, in anywise, excessive or discriminative or that complainant received for the transportation of same, only a fair and reasonable return for the services rendered. And respondents deny that under the tariff of rates promulgated and so sought to be enforced the complainant would be required to handle and move said commodities at an unreasonable, unjust and unremunerative rate, or at a rate that would not afford to it a reasonable return for the services rendered in transporting said commodities. And they deny that if complainant is required to put said tariff into effect, it would be deprived of more than one-fourth or any proportion of its just and reasonable revenue for the handling of said commodity; or, that it will be thereby prevented from earning a reasonable return for its said services, and respondents deny that to that extent or to any extent whatsoever, it will be deprived of its property without due process of law by the enforcement of the tariff of rate so adopted by the Railroad Commission, defendant.

And respondents deny that for the pretended reasons set out in said bill of complaint or for any other reason, whatsoever, the said proposed tariff is unreasonable and unjust or such as the defendant commission is not authorized to make and enforce, or, if enforced, that it will deprive complainant of its just revenue from the movement of said commodities and without due compensation for the services in handling the same, on the contrary of all thereof, respondents aver that the previous rates in effect upon the complainant's railway for the transportation of said commodities were unreasonable, unjust and excessive, and enabled the complainant thereby to exact from its patrons in the State of Louisiana a greater freight charge than it was justly entitled to, and aver that the schedule of rates so adopted and proposed to be enforced by the defendant, Railroad Commission, was and is just, fair and reasonable, and will enable the complainant to earn all it is entitled to earn for its service in transporting the said commodities.

6th. For lack of information or knowledge upon the subject, respondents can neither admit nor deny the allegations contained in the 9th paragraph of said bill of complaint that 19 the said proposed tariff makes a reduction in the distance mileage rate, theretofore in effect, of  $33\frac{1}{4}$  to 50 per cent., and in the event that the movement of such commodities in future should be greater for the short distance than heretofore, the reduction in complainant's revenue would be greater than that set out. And if said allegations shall be considered material, respondents call for strict proof thereof.

And respondents aver that while it may be true, as stated in said bill of complaint, that the bulk of the cotton-seed movement is prac-

tically limited to a haul of less than one hundred miles, the fact that such movement is so circumscribed and limited, is largely due to the excessive charge made by complainant for its longer distance hauls, all of which it is proposed to remedy by said Order No. 484.

And respondents, further answering, deny that all or any of the complainant's tariffs for the handling of all commodities between points in the State of Louisiana have already been reduced as low as possible consistent with earning a fair return for the operation of its road, and upon the capital invested in its property and deny that the financial and physical condition of complainant's property is such that it cannot afford to have its revenue any further reduced without seriously impairing its ability to furnish the character of service demanded by the public in the operation of its property and enable it to meet its fixed charges and operating expenses.

And they deny that only with the most economical management in the operation of its properties, is complainant now enabled to put necessary betterments and improvements upon its said property and to meet its fixed charges and operating expenses; but, however that may be, respondents deny the right of complainant to exact excessive freights from the present generation for betterments and permanent improvements. And respondents deny the right of complainant to charge for the transportation of cotton-seed and cotton-seed products, and greater rate of freight than is allowed by the order of the defendant commission complained of, and aver that the said service is not worth more than the charge thereby allowed. And respondents deny that the effect of making the reduction proposed by the said commission's tariff would impair complainant's ability to perform its services to the public, and again deny that the said proposed tariff on cotton-seed and cotton-seed products is unjust or unreasonable in itself and not justified by the conditions surrounding

the movement of said traffic or by the financial or physical condition of complainant's property. On the contrary, thereof, respondents aver and will maintain that the tariff of rates for the transportation of said commodity, as fixed by said Order No. 484, is just, reasonable and fair.

And now, having fully answered, respondents pray to be hence dismissed with their costs in this behalf expended. And as in duty bound, etc.

(Signed)

WALTER GUION,  
*Attorney General,  
Solicitor for Defendants.*

## EXHIBIT "I" TO ANSWER.

Filed March 27th, 1906.

No. 56. B. R. Div.

THE TEXAS & PACIFIC RAILWAY COMPANY  
vs.  
THE RAILROAD COMMISSION OF LOUISIANA et al.  
Railroad Commission of Louisiana.

Order No. 457.

Circular No. 118.

RAILROAD COMMISSION OF LOUISIANA  
vs.  
RAILROADS OPERATING IN LOUISIANA.

Heard May 22, 1905.

Decided July 11, 1905.

## Rates on Cotton-Seed and Cotton-Seed Products.

This proceeding was instituted by the commission as the result of their decision (Order No. 406) in the case of the Standard Cotton-Seed Oil Company, Limited, et als., vs. The Texas and Pacific Railway Company, et als., rendered November 15, 1904, when there appeared to be a necessity for the adoption of uniform mileage rates for the transportation of cotton-seed and cotton-seed products between points in Louisiana.

Accordingly, a general circular was issued by the commission, copies of which were sent to all cotton-seed oil mills in the state, all railroad companies operating in Louisiana and to planters' association. The widest possible publicity was also given to this circular through the medium of the press. The circular fixed a date for the hearing and named a tariff mileage rates, both for the transportation of cotton-seed and cotton-seed products, and invited all parties interested to be present and present their views on the subject to the commission.

The hearing was held at Baton Rouge, Louisiana on May 22, 1905, and was more largely attended than any hearing ever held by the commission. Mill men, planters' associations, cotton growers and railroads were represented. The fullest opportunity was given to each party present to discuss the rates proposed by the commission.

The principle [principal] contention made by the New Orleans mills was that the present rates were unreasonable in themselves and excessive, especially for the long hauls, and, therefore, should be reduced, claiming also that under the existing adjustment of rates



the mills situated in the City of New Orleans were at a disadvantage in the territory adjacent to country mills by reason of the lower rates enjoyed by such mills.

On the other hand the country millers, without exception, contended that even with the present adjustment of rates, New Orleans mills had an advantage over them in rates on fuel and materials used in the manufacture of the products of cotton-seed, and by reason of the rates on products which the country mills had to pay to the markets—New Orleans being one of the primary markets and principal export points for the products of cotton-seed. The cotton-seed producers desired the present conditions to remain unchanged and requested the commission not to adopt the rates proposed by them.

The question involved in this case is one of too great importance to be disposed of without the most careful consideration and upon the fullest information. The interests of all parties must be properly weighed and adjusted. The testimony had been full and the commission's examination of the facts has been exhaustive. No one, save the New Orleans mills, are complaining of present conditions, and no one appears to be injured by the rates as they are now adjusted. The character of a rate on any staple product must be expansive and flexible. There may arise cases where an adjustment of rates on any railroad may become necessary at any time. The commission does not pretend to say that such cases do not exist, but in the present instance, the only matter which is before the commission for consideration, is the adoption of a uniform mileage tariff to apply on cotton-seed and cotton products.

The record in this case does not develop a sufficient reason for the adoption of the rates proposed in Circular No. 118. After the most careful deliberation, the commission has reached the conclusion that the adoption of the proposed rates would seriously disorganize the industries involved, and would not result in particular benefit to any of those interested.

The commission further considers that complaints against the rates from or to any locality should be adjusted as they arise, believing such a procedure to be far more satisfactory than to attempt, on account of occasional irregularities in rates on the products to readjust the traffic, commercial and economic conditions of the entire state.

It is therefore ordered that the case be and is hereby dismissed.

By order of the Commission, Baton Rouge, Louisiana, July 11, 1906.

[SEAL.]

C. L. DE FUENTES, *Chairman.*  
Commissioners: W. L. FOSTER.  
OVERTON CADE.

A true copy.

W. M. BARROW, *Secretary.*



*Notice of Filing of Answer.*

Extract from the Chancery Order Book.

WEDNESDAY, March 28, 1906.

No. 56. B. R. D.

TEXAS &amp; PACIFIC RAILWAY COMPANY

VS.

THE RAILROAD COMMISSION OF LOUISIANA et al.

The Railroad Commission of Louisiana, C. L. De Fuentes, William L. Foster and Overton Cade, through their solicitor, Walter Guion, attorney general, have this day filed their joint and several answer to the bill of complaint of the Texas and Pacific Railway herein.

23

*Replication.*

Filed April 21, 1906.

In the Circuit Court of the United States for the Eastern District of Louisiana. In Equity.

No. 56. Equity.

TEXAS &amp; PACIFIC RAILWAY COMPANY et al., Complainant.

VS.

THE RAILROAD COMMISSION OF LOUISIANA et al., Defendants.

This repliant, the Texas and Pacific Railway Company, saving and reserving to itself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendants for replication thereunto, saith, that it doth and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true; all [of] which matters and things this repliant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by his said bill he hath already prayed.

(Signed)

HOWE, SPENCER AND COCKE,  
THOMAS J. FREEMAN,  
*Solicitors for The Texas & Pacific  
Railway Co., Complainant.*

*Notice of Filing of Replication.*

Extract from the Chancery Order Book.

No. 56. B. R. D.

SATURDAY, April 21, 1906.

TEXAS &amp; PACIFIC RAILWAY Co. et al.

VS.

THE RAILROAD COMMISSION OF LOUISIANA et al.

The Texas & Pacific Railway Company, through its solicitors, Howe, Spencer & Cocke and Thomas J. Freeman, has this day filed a replication to the answer of the Railroad Commission herein.

*Stipulation.*

Filed December 6, 1906,

No. 52 [56.]

TEXAS &amp; PACIFIC RAILWAY COMPANY

VS.

RAILROAD COMMISSION OF LOUISIANA.

Baton Rouge Division.

In the above styled and numbered cause it is hereby stipulated between the counsel representing the complainant and the defendants, that the complainant may have until the 10th day of January, 1907, in which to complete the taking of its testimony in chief, and that the defendants may have until the 15th day of March, 1907, in which to take their evidence, and the complainants to have until the 1st day of April, 1907, in which to close their testimony.

(Signed)

HOWE, SPENCER AND COCKE,  
THOS. J. FREEMAN, *for Complt.*  
WALTER GUION,

*Attorney General, Solicitor for Defendants.**Stipulation.*

Filed December 6, 1906,

No. 52 [56.]

TEXAS &amp; PACIFIC RAILWAY COMPANY

VS.

RAILROAD COMMISSION OF LOUISIANA.

Baton Rouge Division.

It is agreed between the counsel representing the complainant and the defendants in the above styled and numbered cause, that said cause which is now pending in the Baton Rouge Division of the

Court, may be transferred to the New Orleans Division of the Court and is to be heard at New Orleans.

(Signed)

HOWE, SPENCER AND COCKE,

THOS. J. FREEMAN,

*Solicitor for Compl.*

WALTER GUION,

*Att'y Genl., Solicitor for Defendants.*

Order of Reference to E. D. Saunders, Special Master.

Filed December 21, 1906,

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 56.

TEXAS & PACIFIC RAILWAY COMPANY

VS.

RAILROAD COMMISSION OF LOUISIANA.

The Court being informed that this cause is at issue and ready for the taking of testimony and evidence.

The Court of its own motion hereby appoints Eugene D. Saunders, Esq., Special Master in Chancery in this cause with all the powers and duties appertaining to Masters in Chancery.

Said Special Master is hereby empowered and directed to hear all the evidence and testimony in this cause and to make findings of all the facts therein and his conclusions of law thereon, for the Court's advice. Said Special Master shall report all the evidence and testimony and his findings of fact and conclusions of law.

(Signed)

CHARLES PARLANGE,

*U. S. Judge.*

December 21, 1906.

*Acceptance of Appointment by Special Master.*

Filed December 26, 1906.

TEX. & PAC. RW. Co.

VS.

R. R. COMMISSION OF LA.

Eugene D. Saunders,

Hewes T. Gurley,

Saunders & Gurley.

Law Offices, 840 Common St., New Orleans.

DECEMBER 21st, 1906.

To the Honorable the Judges of the Circuit Court for the Eastern District of Louisiana, Baton Rouge Division:

I have the honor to notify the Court that I accept the appointment

of Special Master conferred upon me by order of Court in the above entitled cause of date December 21st, 1906.

Very respectfully,  
(Signed)

E. D. SAUNDERS.

*Order Appointing Special Master.*

Filed March 5, 1907.

United States Circuit Court, Fifth Circuit & Eastern Dist. of Louisiana.

No. 56. Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY

VS.

THE RAILROAD COMMISSION OF LOUISIANA.

This Court being informed that this cause is at issue and ready for the taking of testimony and evidence, of its own motion, hereby appoints Solomon Wolff, Esq., Special Master in Chancery in this cause, with all the powers and duties appertaining to Masters in Chancery. Said Special Master is hereby empowered and directed to hear all the evidence and testimony in this cause, and to make findings of all facts therein and his conclusions of law thereon, for the Court's advice. Said Special Master shall report all the evidence and testimony, and his findings of fact and conclusions of law.

(Signed)

ALECK BOARMAN,  
United States Judge.

*Acceptance of Appointment of Solomon Wolff [Wolff] as Special Master.*

Filed March 7th, 1907.

TEXAS & PACIFIC RAILWAY COMPANY

VS.

RAILROAD COMMISSION OF LOUISIANA.

No. 56. B. R. Div.

Hon. H. J. Carter, Clerk, U. S. C. C. Court City:

DEAR SIR—I have a copy of order naming me as Special Master in the matter of The Texas & Pac. Ry. Co. vs. The Railroad Com. of La., #56 in your court. I accept the appointment.

Yours very truly,

S. WOLFF.

New Orleans, 7 March, 1907.



*Principal Report of Special Master.*

Filed March 7, 1908.

United State Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 56.

THE TEXAS &amp; PACIFIC RAILWAY COMPANY

VS.

THE RAILROAD COMMISSION OF LOUISIANA.

To the Honorable the Judges of the United States Circuit Court for the Eastern District of Louisiana:

I beg to submit this, my report, as Master in the above entitled and numbered cause.

The "Texas & Pacific Railway Company," complainant herein, is a corporation organized by Act of Congress, and the defendant is a public corporation, organized under the Constitution and Laws of the State of Louisiana. It has power

"to adopt, change or make reasonable and just rates, charges and regulation, to govern and regulate railroad freight and passenger tariffs and service to correct abuses, and prevent unjust discrimination." (Const., Art. 284.)

and is given ample power and authority to effect all these purposes in connection with intra State business.

On the 13th day of December, 1905, the said Railroad Commission, in the matter of "Longbridge Cotton Oil Company vs. Texas & Pacific Railway Company" issued its order No. 484 (printed as Exhibit "A" at p. 17 of complainant's bill, and further on given here in full) fixing the rates which the Texas & Pacific Railway Company should thereafter charge for the transportation of cotton seed and cotton seed products, for certain distances. (Complainant's bill, p. 18.)

On 29th December, 1905, the commission granted a rehearing in the matter (Circular 40, printed as Exhibit "B" at p. 20 of complainant's bill) and, on the 9th day of January, 1906, the commission issued its order No. 489 (printed as Exhibit "C" at p. 21 of complainant's bill), affirming its order 484, and ordering the rates, as fixed therein, "to become effective on and after February first, 1906."

On the 30th January, 1906, the "Texas and Pacific Railway Company" filed its bill in the United States Circuit Court, in which, among other things, it averred substantially, that the rates, promulgated by the defendant commission, in its order No. 484, were unreasonable and unjust, and it prayed that the defendant commission and the members composing it be enjoined and

restrained from enforcing the said rates against complainant. Other things complained of and prayed for are not of moment, as the evidence given before the Master and the oral arguments and briefs submitted by the parties were devoted exclusively to the issue, whether the rates established by the commission were or were not unfair and unreasonable. The complainant says they are, the defendant, in its answer, avers they are not.

On March 5th, 1907, the present Master was appointed and he was

"empowered and directed to hear all the evidence and testimony in this cause, and to make findings of all facts therein and his conclusion of law thereon, for the Court's advice. Said Special Master shall report all the evidence and testimony and his findings of fact and conclusions of law."

In keeping with these instructions, the Master heard many witnesses. A large number of exhibits were filed in connection with their testimony, and with the depositions of several witnesses taken under commission. On 28th October, 1907, the case was elaborately argued by Thomas J. Freeman, Esquire, for the complainants; the Honorable Walter Guion, Attorney General of Louisiana, and T. Marshall Miller, Esquire, for the defendant commission. On the 11th day of November, both sides submitted briefs.

## II.

For a correct understanding of the issue, and properly to appreciate the conditions which resulted in the orders 484 and 489 (the latter affirming the former) it is necessary to review the orders and acts of the commission which led up to the orders attacked in this cause.

On 15th December, 1904, the commission issued its order No. 406, in the matter of the "Standard Cotton Seed Oil Company, Limited, vs. "The Texas and Pacific Railway Company, et als." This order is as follows:

30 "On September 23rd, 1904, the "Standard Cotton Seed Oil Company, Limited," of New Orleans, filed with the commission a petition making complaint against various cotton seed rates from points in the State of Louisiana to the City of New Orleans, alleging discriminations in the rates complained of, and declaring the same to be arbitrary, unjust, unreasonable, and far in excess of what ought to be charged for the service rendered.

The commission was asked so to revise and readjust the rate on cotton seed as to provide for just and reasonable charges for the transportation of cotton seed from producing points in the State of Louisiana to the City of New Orleans.

A special hearing was granted in this case at New Orleans on October 5, 1904, and the hearing was continued on the 6th, and concluded on the 7th of that month. At the hearing testimony of many witnesses was taken and a great amount of documentary evidence submitted.

The commission has carefully considered the record in this case.

There appears to be some necessity for a change in some of the rates now being charged in the State, especially the maximum rates for long distances, these being the rates which are of most importance to the oil mills located in the City of New Orleans.

The present adjustment of rates in the State is such that each oil mill enjoys rates which do not vary widely from points located at similar distances from each mill.

The commission believes that the most equitable adjustment of this question will be the establishment of uniform mileage rates, with a maximum rate of 15 cents per 100 pounds.

It is therefore decided, that a tariff of mileage rates on cotton seed will be prepared by the commission at once, and all the interests in the State will be granted a hearing on this proposed tariff at a subsequent session of the commission, and it is so ordered."

As outlined in the foregoing order, the commission issued its Circular No. 118, proposing a tariff of rates like the one attacked here. (Braggins, p. 8, answer to Q. 12. Barrow, Dfts., Test. answer to Q. 45.)

On 22nd May, 1905, the commission heard all parties who presented themselves, on the rates proposed in Circular 118, and on 11th July, 1905, issued its Order No. 457 as follows:

Order No. 457—Railroad Commission of Louisiana vs. Railroads Operating in Louisiana. Circular No. 118. Heard May 22, 1905. Decided July 11, 1905. Rates on Cotton Seed and Cotton Seed Products.

"This proceeding was instituted by the commission as the result of their decision (Order No. 406) in the case of the "Standard Cotton Seed Oil Company, Limited, et als., vs. The Texas & Pacific Railway Company, et als.," rendered November 15, 1904, when there appeared to be a necessity for the adoption of uniform mileage rates for the transportation of cotton seed products between point in Louisiana.

"Accordingly, a general circular was issued by the commission, copies of which were sent to all cotton seed oil mills in the State, all railroad companies operating in Louisiana, and to all planters' associations. The widest possible publicity also given to this circular through the medium of the press. The circular fixed a date for the hearing, and named a tariff of mileage rates, both for the transportation of cotton seed and cotton seed products, and invited all parties interested to be present and present their views on the subject to the commission.

"The hearing was held at Baton Rouge, Louisiana, on May 22, 1905, and was more largely attended than any hearing ever held by the commission. Mill men, planters' associations, cotton growers, and railroads were represented. The fullest opportunity was given to each party present to discuss the rates proposed by the commission.

"The principal contention made by the New Orleans mills was that the present rates were unreasonable in themselves, and excessive, especially for the long hauls, and therefore should be reduced, claiming, also, that under the existing adjustment of rates, the mills situated in the City of New Orleans were at a disadvantage in

the territory adjacent to country mills, by reason of the lower rates enjoyed by such mills.

"On the other hand, the country millers, without exception, contended that, even with the present adjustment of rates, New Orleans mills had an advantage over them in rates on fuel and materials used in the manufacture of the products of cotton seed, and by reason of the rates on products which the country mills had to pay to the markets.—New Orleans being one of the primary markets and principal export point for the products of cotton seed. The cotton seed producers desired the present conditions to remain unchanged and requested the commission not to adopt the rates proposed by them.

32 "The question involved in this case is one of too great importance to be disposed of without the most careful consideration and upon the fullest information. The interests of all parties must be properly weighed and adjusted. The testimony has been full, and the commission's examination of the facts has been exhaustive. No one, save the New Orleans mills, are complaining of present conditions, and no one appears to be injured by the rates as they are now adjusted. The character of a rate on any staple product must be expansive and flexible. There may arise cases where an adjustment of rates on any railroad may become necessary at any time. The commission does not pretend to say that such cases do not exist, but in the present instance, the only matter which is before the commission for consideration, is the adoption of a uniform mileage tariff to apply on cotton seed and cotton seed products.

"The record in this case does not develop a sufficient reason for the adoption of the rates proposed in Circular No. 118. After the most careful deliberation, the commission has reached the conclusion that the adoption of the proposed rates would seriously disorganize the industries involved, and would not result in particular benefit to any of those interested.

"The commission further considers that complaints against rates from or to any locality should be adjusted as they arise, believing such procedure to be far more satisfactory than to attempt, on account of occasional irregularities in rates on these products, to readjust the traffic, commercial, and economic conditions of the entire State.

It is, therefore, ordered, that the case be, and is hereby dismissed."

On 9th November, 1905, in the matter of Longbridge Cotton Oil Company vs. Texas and Pacific Railway Company, the commission again considered the subject, and on 12th December, 1905, issued its order No. 484, as follows:

"**Mileage Rates on Cotton Seed and Cotton Seed Products.** Heard November 9th, 1905. December 12th, 1905.

"The commission having under consideration the record in this case, and after full hearing and investigation, finding the rates on cotton seed and cotton seed products on the Texas & Pacific Railway in Louisiana to be excessively high, as compared with the rates



on other railways in Louisiana, and in other States, and in some instances discriminative and unjust to certain localities, and believing the best interests of the general public will be subserved by the establishment of a uniform mileage rate on the commodities named, it is, therefore, ordered that the following rates be and are hereby established on cotton seed and cotton seed products, to be transported between points on the said railway in Louisiana:

	Cotton-seed, carloads, min. wt. 24,000 lbs.	All Cotton seed products, except oil and tank bottoms, min. wt. 24,000 lbs.	Oil and tank bottoms min. wt. in bbls. 30,000 lbs., in tank, 24,000 lbs.
10 miles and less.....	3	3	4
20 miles and over 10....	4	3.5	5
30 miles and over 20....	4.5	3.75	6
40 miles and over 30....	5	4	7
50 miles and over 40....	6	4.25	7.5
60 miles and over 50....	7	4.5	8
70 miles and over 60....	7.5	4.75	8.5
80 miles and over 70....	7.5	5	9
90 miles and over 80....	8	5.25	9.5
100 miles and over 90....	8.5	5.5	10
110 miles and over 100....	9	5.75	10.5
120 miles and over 110....	9	6	11
130 miles and over 120....	9.5	6.5	11.5
140 miles and over 130....	9.5	6.5	12
150 miles and over 140....	10	6.75	12.5
160 miles and over 150....	11	7	13
170 miles and over 160....	12	7.25	13.5
180 miles and over 170....	13	7.5	14
190 miles and over 180....	14	7.75	14.5
200 miles and over 190....	14.5	8	15
210 miles and over 200....	15	8	15.5
225 miles and over 210....	15	8	16
Over 225 miles.....	15	8	17

35 The rates proposed will apply as follows:

On cotton seed, straight carloads.

On cotton seed cake and meal, straight or mixed carloads.

On cotton seed ashes, straight carloads.

On cotton seed hulls, straight carloads.

On cotton seed oil and tank bottoms, in barrels, straight or mixed carloads.

"All rates previously in effect on cotton seed and cotton seed products between points on the "Texas & Pacific Railway in Louisiana are hereby cancelled.

"The above rates on cotton seed will apply when fifty (50%) per cent. of the products of the seed hauled in, other than linters,



hulls and ashes, or shipped out via the "Texas & Pacific Railway." Otherwise, the rates on cotton seed will be three (3¢) cents per one hundred (100) pounds higher. This applies except on seed shipped into New Orleans for Gretna."

The only difference between the rates proposed in Circular 118 and those established in the foregoing order, is in the last sentence, which excepts New Orleans and Gretna from the operation of the last clause. That is, the mills in New Orleans and Gretna did not have to pay three (3¢) cents per one hundred (100) pounds more for seed than the fixed rates, although fifty (50%) per cent of the product was not shipped on the complainant road, while the country mills did have to pay the extra three (3¢) cents per one hundred (100) pounds, unless fifty (50%) per cent of the product was shipped.

As already noted, a rehearing was granted on 29th December, 1905, to take place 8th January, 1906, and on the 9th January, 1906, order 484 was affirmed by order 489, but modified so, that the rates would not become effective until 1 February, 1906, instead of 24 December, 1905, as originally provided by order 484.

### III.

With a few exceptions, the rates, which the commission changed by the order attacked in this cause, have been in force on complainant line for sometime before and certainly since the creation of the "Railway Commission."

Mr. Barrow, secretary of the commission, testifies, pp. 36 et seq., that "L. C. No. 95 (local tariff rates of complainant Co.) was filed with the commission about 1899. In 1904, the secretary of the commission called complainant's attention to its failure to have the authority of the commission for the rates established by L. C. 95. The application was made for authority on May 19, 1904 (D'fts Ex. D. 2) and authority was granted May 26, 1904 (D'fts. Ex. D. 1)."

"To publish Tariff L. C. No. 95, naming rates on cotton seed and cotton seed products between stations on the "Texas & Pacific Railway" in Louisiana, provided, there are no increases."

Tariff L. C. No. 95 is annexed as Exhibit "A" to deposition of H. L. Redfield, assistant general freight agent of the complainant company.

The rates, so established, can with convenience be consulted in defendant's Exhibit "D" 14, in the column marked "T. & P. Ry. Main Line," and except as to a few points for which from time, the commission granted permission to establish special rates (Barrow pp. 27 et seq.), the rates fixed in L. C. No. 95 remained in force from 1899 to 1904, with the tacit approval of the commission, and from May, 1904, with its express approval.

There is nothing in the record to show that any attack was made upon these rates, until the matter was brought to the attention of the commission on 23rd September, 1904, in the matter of the "Standard Cotton Seed Oil Company" vs. "The Texas & Pacific Rail-

Company," and which resulted in the order No. 408 (given in p. 11 of this report) made on 15th December, 1904.

From this order, and order No. 457, made on 11th July, 1905, it will appear, that, up to then, all movements looking to a change in rates were initiated by the mills, in the City of New Orleans. The mills, outside the city, were not only satisfied with existing conditions, but even appeared in advocacy of it. In this, they were apparently joined by the merchants and farmers (D'f's Test. pp. 170 et seq.)

It is quite true that we are here concerned with only one issue—i. e., are the rates attacked reasonable and fair, or are they not? We are not concerned with the location of the parties who attacked the old rates, nor with the old rates themselves, still, as I will try to show later on, both may aid us, in coming to a correct conclusion upon the main question, and I consider them only for that purpose.

New Orleans obtains seed on complainant's line from points ranging between eighty-five (85) and two hundred (200) miles from the city—practically between Plaquemine and Boyce. There is no seed nearer than Plaquemine, and, to buy seed at any point further than Boyce, it is not apt to be profitable. (Hamilton, D'f's Test. p. 70; Braggins, Pl'ts p. 36; Redfield, Dep., answer to cross int. 31), while the bulk of the seed, which the mills outside of New Orleans get, comes from distances that, in but few instances, exceed (40) miles. (Redfield's Dep., answer to eighth int.)

#### IV.

Mr. L. B. Thorne, first vice president and manager of complainant, in his deposition, gives the amount of the capital stock of the company (p. 3) and bonds issued (p. 4). He testifies that the road is well and economically managed, etc. (p. 1); that it is entirely dependent on its earnings for outlays of every character (p. 2); that it "has barely been enabled to earn a sufficient revenue to meet its fixed interest charge, including taxes, and it has not been able to make betterments. It has only been enabled to keep its property in a fair condition for operation, and not in a first-class condition," etc. (p. 2). No dividend has ever been paid on its capital stock (p. 3); "every cent of its current earnings, in excess of its legitimate operating expenses, and its fixed interest charge," is put into betterments, improvements, equipment, etc., and that the earnings are not sufficient to make permanent improvements," "and any reduction in revenue will cripple its ability to make improvements and serve the public, as they demand" (p. 3).

Mr. Redfield, assistant general freight agent of complainant, in his deposition (answer to eighth interrogatory) estimates that the loss which the complainant would sustain, if the new rates are put in, at "twenty-three thousand, seven hundred and seventy-five dollars" (\$23,775.95) a year. This is based on the tonnage for 1905, in which the production of cotton was comparatively small. He asserts that with increased tonnage, the loss would be still greater.

To cross interrogatories, he answers:

In 1896, the rate per ton per mile over the entire system for all freight was 1.085/1000; for 1906, 991/1000.

For Louisiana, the rate per ton per mile for all classes of freight was for 1906, 1.015/1000. Data for 1896 is not compiled.

38 He adds, that "the high rate per ton per mile in Louisiana is due solely to short hauls, as the shorter the haul, the greater the average per ton per mile."

To the seventh cross interrogatory, the witness answered:

Rate for cotton seed and its product in 1890, was, 1.17/100 cents per ton per mile; in 1904 it was 1.15/100; in 1906, .86/100 cents per ton per mile.

Mr. Redfield's answer to thirty-second cross interrogatory gives the following earnings:

For year ending 30th June, 1905:

Entire line.....	gross per mile, 692,610—net, 2,372.87
Texas .....	gross per mile, 747,850—net, 2,274.37
Louisiana .....	gross per mile, 646,653—net, 2,230.19

Mr. Tower, answer to sixth cross interrogatory, gives the earnings for the whole mileage in Louisiana, for year ending 30 June, 1905..... gross, 4,806,564.60—net, 2,044,641.72  
30 June, 1906..... gross, 4,295,395.50—net, 1,481,408.46

The earnings for the whole system for the same period were:

Gross .....	12,300,580.97	Net .....	4,370,064.74
Gross .....	12,657,584.06	Net .....	4,336,464.03

Mr. Tower, in answer to fourteenth cross interrogatory, gives cost of construction per mile, up to 30 June, 1906, at \$50,610.07. Could not give cost of mileage in Louisiana.

To sixteenth cross interrogatory, he answers:

Outstanding capital stock is.....	\$38,763,810.00
Mortgage bonds.....	54,621,531.32

The latter, with the exception of \$6,000, for which the rate is not given, bear five (5%) per cent. int. The total of the stock and bonds "represent the amount of money received for same. In fact, the stock was assessed an additional amount of ten (10%) per cent."

Many more figures are given. I do not think them of importance to the inquiry.

## V.

39 As I appreciate the case, the facts heretofore stated are the only ones that are directly connected with the inquiry, whether the new rates, which the commission proposes to establish, are fair and reasonable? There is much evidence to the effect, that the old rates were unfair and unreasonable, especially to the New Orleans mills, which complain that the rates worked against them, and in favor of those outside of the city. These rates, it is charged, were and are the cause of the great decline in the receipts of cotton seed by the New Orleans mills. I will later on discuss this

phase, but it should not be forgotten that, even if it be true that the old rates were unfair and unreasonable and discriminated against New Orleans, it yet would not follow that the rates proposed by the commission, in order 484, are in themselves fair and reasonable.

Yet, that is the only question with which we are here concerned; others may be considered, as they aid us to a correct conclusion on the main issue.

Before considering the rates themselves, and what is shown for or against them, I take up the contention, urged by the commission, that

"The presumption of law is in favor of the maintenance of the order of the Railroad Commission in this cause \* \* \* and that an order of a Railroad Commission will not be set aside, unless flagrantly violative of the rights of the complainant carrier."

This quotation is from a memorandum submitted by the attorney general, and as I read the cases, cited in support of the proposition, they do not go to the extent indicated in the quotation.

The cases which hold the rates, established by a commission, as being *prima facie* reasonable, are those arising in States, whose statutes specially declare that these rates be so considered; or, they are cases in which the issue was, whether the rates are confiscatory, and so violative of the Constitution of the United States.

In the first class of cases, the Courts held that the express declaration of the Legislature controls. In the other cases, the declaration of the Courts is based on the elementary principle, that legislative acts are presumed to be constitutional.

So, in "*Dow vs. Beidleman*, 125 U. S. 680," the Court held that, with the evidence before it, it could not say that the maximum rate, fixed by statute, was a taking of property, without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

40 In "*St. L. & San Francisco Ry. vs. Gill*, 156 U. S. 649, there was no evidence at all in the record. That which was offered, but not admitted, was held to be unsatisfactory, because it applied only to the effect which the rate established by Act of Legislature would have on part, and not on the entire line in the State, and the Court

"did not feel warranted, by all that appears in the record, in declaring invalid an Act of the Legislative [Legislature] of Arkansas, which on its face appears to be a legitimate exercise of power, and which has not been shown, by clear and satisfactory evidence, to operate unjustly and unreasonably in a constitutional sense." p. 687.

In *Jacobson vs. Wisconsin, etc., R. R. Co.*, 40 L. R. A., 389, the Court lays stress upon the statutory declaration and says, p. 391, "under the statute, every presumption is in favor of the commission."

In "*Minneapolis & St. Louis R. R. Co. vs. Minnesota*, 186 U. S., at 264, the Court does say, "the presumption is that the rates fixed by the commission are reasonable," but it appears that the statute under which the commission was acting provided, that "the scheduled



rates, so established, shall be *prima facie* evidence in all the courts of this State that such through rates are reasonable."

Even where the statute specially provides, that the schedules established by the commission shall in suits brought, "be deemed and taken in all courts of this State as sufficient evidence that the rates fixed therein are just and reasonable," the Court treated the declaration merely as a rule of evidence established by the Legislature in such matters.

"Pensacola & A. R. Co. vs. State of Florida, 3 L. R. A. 661," at p. 663.

If this be the true view, can it be said that such a rule of evidence exists in Louisiana, where the constitutional articles, establishing the commission, do not declare it?

I have been referred to other cases, which, on examination, I do not find in point.

Chicago, etc., Ry. vs. Tomkins, 176 U. S. 167; The Court merely held the presumption that the Legislature acted with full knowledge of the facts upon which its legislation is based, does not go to the extent of denying to the Court an investigation of its judgment upon these facts. That, when the constitutionality of an act is attacked, the presumption of the law is, that the act is valid, and he, who attacks it, has the burden of proving its unconstitutionality.

In *Soon Hing vs. Crowley*, 113 U. S. 703, it was claimed that a municipal ordinance, forbidding laundries within certain limits, violated the Fourteenth Amendment and its adoption was brought about by antipathy and hatred of the Chinese, etc. The Court declared that it could not inquire into the motives that actuated the legislator.

Among the authorities cited by the attorney general in support of the presumption of fairness, etc., is that of *Chicago B. & Q. R. Co. vs. Dey, et al.*, R. R., 656. Though this case was decided in favor of the rates established by the commission, the Court did so only after examination, and nowhere is it said in the opinion, that any presumption existed in favor of the rates fixed by the commission, and the commission to say this is not without meaning, since the statute declares in so many words, that the schedules established by the commission "shall be deemed *prima facie* reasonable." *Syllabus*, p. 656.

Nor is the theory advanced sustained by Elliott on Railroads, Vol. 2, p. 691, also cited by the attorney general.

In "*Spring Valley Waterworks vs. City, etc.*," 6 L. R. A. 756, the complaint charged that the rates had been fixed without any notice or hearing being accorded the complainant, and without investigation of any kind. The case was tried on demurrer to the complaint, and the Court set aside the tariff of rates as a fraud on the rights of the complainant, although it held, that it had no legal authority to control the discretion vested in the defendant, if the defendant's action did not constitute a legal fraud. There is nothing in the opinion that supports the view, that a tariff of rates established



by the defendant in this cause, is presumed to be fair and just. See also "San Diego Water Co. vs. San Diego, 38 L. R. A. 460," to the same effect, though the Court modifies some expression in the case in 6 L. R. A., but these expressions and modifications have no bearing here.

The articles of Constitution of Louisiana, establishing the commission, nor the acts of the Legislature relating to the subject, do not contain such a clause, and since the statutes on the subject in many States contain the expression that the rates fixed by the commission are prima facie to be presumed reasonable and fair, it is a reasonable inference from the omission, that this should not be so in Louisiana. That there is no presumption in law in favor of the rates established by the commission, as I understand it, is the view expressed by His Honor, Judge Saunders, in his opinion in the "Cumberland Telephone & Telegraph Co." vs. the "Railroad Commission of Louisiana" (No. 61, in Equity, Baton Rouge Division), filed on August 20th, 1907 (p. 18). It is true that there the Court so held, because His Honor found that the schedule fixed had not been preceded by a proper investigation; this, however, does not appeal to me as changing the principle, for, if Judge Saunders had been confronted by a statutory, or, better still, a constitutional declaration—that the rates fixed by the commission are prima facie, presumed to be fair and reasonable, he would hardly have gone into the question, whether or not the commission had done the thing which might make the rates prima facie, fair and reasonable.

The case cited from this State—109 La. 263—may be disposed of, by saying, that a Court may justly hold, that the "Railroad Commission," which has heard and seen the witnesses, and is perhaps otherwise acquainted with the locality, is in a better position to decide where a depot should be placed, than the Court. It does not follow that the Court then laid down any principle of general application about legal presumption being, that a tariff of rates was fair and reasonable.

## VI.

Without any presumption for or against the rates, fixed by the commission, I now inquire whether the rates in themselves are fair and reasonable?

The authorities all recognize the difficulty of the task, even where the object is to establish a schedule of rates for all classes of freight transported by a carrier on his entire system.

In the "Trans-Missouri Freight Association" case (see 166 U. S. 331), the Court said:

"What is a proper standard by which to judge the fact of reasonable rates? Must the rate be so high as to enable the return for the whole business done to amount to a sum sufficient to afford the shareholder a fair and reasonable profit upon his investment? If so, what is a fair and reasonable profit? That depends sometimes upon the risk incurred, and the rate itself differs in different localities; which is the one to which reference is to be made as the stand-

ard? or is the reasonableness of the profit to be limited to a fair return upon the capital that would have been sufficient to build and equip the road, if honestly expended? or is still another  
 43 standard to be created, and the reasonableness of the charge tried by the cost of the carriage of the article and a reasonable profit allowed on that and in such case would contribution to a sinking fund to make repairs upon the road and renewal of cars, etc., be assumed as a proper item? \* \* \* It is quite apparent, therefore, that it is exceedingly difficult to formulate even the terms of the rule itself which should govern in the matter of determining what would be reasonable rates for transportation."

The question of "reasonableness of schedule as a whole" is elaborately treated in "Beale & Wyman on Railroad Rate Regulation," pp. 319-456.

Difficult as may be the problem, when an entire schedule of rates over a whole system is considered, it becomes infinitely more difficult, when a rate is to be fixed on a single commodity for only a small part of the system.

"The question of the reasonableness of a rate on a single article of traffic is one of almost insuperable difficulty." \* \* \* The value of the entire property of a road can shed but little, if any, light upon the question whether the rate on a single among thousands of articles of traffic yields its proper proportion of a fair return on that value."

Central Yellow Pine Assn. vs. Ill. Cent. Ry., 10 Int. C. C. Rep. 530.

(a) However, little light total cost or value of the entire road and total income may throw on the issue here, "It sometimes is necessary" (203 U. S., quoted below) to apply the test, and I do so here.

On 30 June, 1906, the cost of the entire system is given by Mr. Tower as being composed of, bonds, \$54,621,531.32; stock \$38,763,810. Total cost, \$93,385,341.32. The cost per mile is \$50,610.07 (answer to fourteenth cross interrogatory); the length of the road is 1,848.05. For elements entering into valuation of R. R. property see Metropolitan, etc., vs. R. R. Co., 90 F. R. 684.

There is no contradiction of this, except it be the inference to be drawn from the evidence of Mr. McFarland (*D'ft's Test.*, p. 263), that the return to the assessor, gives the value of the complainant's main line at \$10,000 per mile, and \$5,000 for its branches. Even, if we take the entire mileage at the higher figure, the cost or value according to return, for assessment, would still not be more  
 44 than about one-fifth of Mr. Tower's figures.

I can, however, not accept the figures returned for assessment, as showing true value. I will not do more than merely refer to the almost universal under-valuation of property for purposes of taxation—a fact so widely known that the courts might almost take judicial cognizance of it. I decline to accept the figures given the assessor, because the Supreme Court of Louisiana, and the Federal Courts all have held, that return for taxation is not conclusive evi-

dence of true value, it is merely one of the factors which the Court may consider (*L. & N. R. R. Co. vs. Brown*, 123 F. R. 946).

I, therefore, find the value of the entire road to be "ninety-three million, three hundred eighty-five thousand, three hundred forty-one and 32/100 dollars" (\$93,385,341.32). The uncontradicted evidence is, that the net income for the year ending 30 June, 1906, is "four million, three hundred thirty-six thousand, four hundred sixty-four and 03/100 dollars" (\$4,336,464.03), and I so find. This income on the cost, I have found, means a return of 0.46%.

It is in evidence that no dividend on stock has ever been paid (Thorne dep., p. 3); that the entire income is needed to meet the interest on the bonded indebtedness. I am here, however, not concerned how the income is apportioned; the only thing I consider here is revenue on entire cost.

Even if we assume the cost of the road to be twice its present value, and there is nothing in the record upon which to base the assumption, the income on value would still not be one per cent.

To the small extent, then, that value and income are of moment here, the rate established by the commission is not fair and reasonable, since it would cause a loss in revenue of "twenty-three thousand, seven hundred ninety-five and 95/100 dollars" (\$23,795.95) (Redfield, answer to eight int.), and so, still further reduce the already small return on either value or investment.

(b) In par. IV of this report, I give the reported gross and net earnings for the entire system per mile for the year ending 30 June, 1905. These are less for Louisiana than either the average for the entire system of the earnings for Texas, but without data, showing the density of *opoulation* [population], amount of traffic, etc., I cannot find that these figures throw any light at all on the question before us.

(c) The rate per ton per mile in Louisiana for all classes of freight for 1906 is 1.015 cents, on the entire system it is less—i. e., .991 cents. It is claimed that the greater charge is due solely to the higher rates for short hauls. This is not denied by any one, and I must, therefore, accept the assertion. Be that as it may, the figures do not help here.

(d) The rate for cotton seed and its product in 1896 was 1.17 cents per ton per mile. In 1904 it was 1.15. In 1906 it was 0.86 cents per ton per mile. There is nothing in the evidence which shows whether these rates are for the entire system or whether they are for Louisiana. If, for the former, they have but little value here. At best, especially if for the road in Louisiana, they only show a decline in the freight rate, but are not of themselves conclusive that even the reduced rate is fair and reasonable. Yet, they would tend in that direction, and reduced rates in Louisiana seem to be further shown by a comparison between the earnings for 1905 and 1906, as given in paragraph IV of this report.

In "*Atlanta, etc., Co. vs. Florida*, 203 U. S. 260," the Court considered a question similar to the one in this case, and said:

"And here we face this situation: The order of the commission was not operative upon all local rates, but only fixed the rate on a

single article—to wit, phosphate. There is no evidence of the amount of phosphate carried locally; neither is it shown how much a change in the rate of carrying them will affect the income, nor how much the rate fixed by the railroads for carrying phosphate has been changed by the commission. There is testimony to show the gross income from all local freights and the value of the railroad property, and also certain difficulties in the way of transporting phosphates owing to the lack of facilities at the terminals; but there is nothing from which we can determine the cost of such transportation. We are aware of the difficulty which attends proof of the cost of transporting a single article, and, in order to determine the reasonableness of the rate prescribed, it may sometimes be necessary to accept as a basis the average rate of all transportation per ton per mile. We shall not attempt to indicate to what extent or in what cases the inquiry must be special and limited." (Writer's italics.)

(c) There is no contradiction of plaintiff's witness—Mr. Thorne—that the road is economically managed, that no excessive salaries are paid, and its business is honestly and efficiently conducted, and I so find.

From these facts it follows, as a legal conclusion, that where an income, without mismanagement, extravagance or dishonesty, returns only 0.46% on investment, it should not be still farther reduced, particularly, where the reduction would mean either the failure to pay interest on bonds, or a still further failure to maintain the property, so that the company's duties as a public carrier could be adequately fulfilled.

The complainant is entitled to a "fair return upon the value of that which it employs for the public convenience" (Mr. Justice Harlan in *Smith vs. Ames*, 169 U. S. 466), and a return that would not be sufficient to at least pay interest on outstanding bonds would not be a fair return. See authorities given in note 2, *Wyman & Beale R. R. Regulation*, Sec. 388, and *Chicago, etc., Ry. Co. vs. Smith*, 110 F. R. 474.

I, therefore, find that the schedule of rates for cotton seed and cotton seed products is unfair and unreasonable, because it would have the effect of reducing the complainant's income to a point where it would either have to cease the payment of interest on its bonds, or forego the full performance of its duties to the public.

It is contended (*Barrow, Defts. Test.*, p—) that the lower rate might bring increased traffic, and the loss be so made up.

Mr. Justice Brewer, in *"Chicago & N. W. Ry. vs. Dey*, 35 F. R. 883, held that this was not the correct view, saying:

"Again it is said that it cannot be determined in advance what the effect of the reduction of rates will be. Oftentimes it increases business. \* \* \* But speculations as to the future are not guides for judicial actions; Courts determine rights upon existing facts. Of course there is always a possibility of the future; good crops may increase transportation business; poor crops reduce; high or low rates may also affect; but the only fair judicial test is to apply the rates to the business that has been done in the past, and see whether upon



that basis, such rates will be remunerative, or compel the transaction of business at a loss";

and Mr. Tower says (answer to Int.—) that increase of business would mean increase of loss.

I agree with the attorney general that, a single rate is not shown to be unreasonable, merely because a like reduction in rates on all other articles would disable the road from paying operating expenses (Minneapolis, etc., R. Co. vs. Minnesota, 186 U. S. 257), and I have, therefore, not noticed the calculation made for that purpose by complainant's witnesses (Tower, answer to 5th & 6th int.; and Redfield, answer to twelfth int.).

## VII.

The defendant commission, through its witness, Mr. Barrow, secretary of the commission, has filed in evidence the tariffs established by various States (Def't's Test., p. 10). From these tariffs Mr. Barrow has compiled a statement in which these rates are compared with each other, and with the rates established by the commission in its order 484, and the rates in existence on complainant's road under "L. C. 95." See D't's Ex. "D" 7.

That comparison of rates is an element which may be considered in fixing a rate, has been repeatedly held. "Cincinnati Fight. Bureau vs. Cincinnati, etc., Ry., 6 I. C. C. Rep. 195"; "Morrel vs. Union Pacific, Id. 121." We should, however, not compare one isolated rate with another, the whole field must be considered. "Howell vs. N. Y., etc., R. R., 2 I. C. C. R. 272." Rates on branch and main lines cannot be compared. "Northwestern Ass. vs. Chicago R. R., 2 I. C. C. R. 264." Nor rates on traffic, moving in different directions. "Duncan vs. Atchison, etc., 6 I. C. C. R. 385." At best a comparison of rates on different systems is but an approximation. "Howell vs. N. Y., etc., R. R. & 2, I. C. R. R. 272," and "of itself is not sufficient to condemn the higher charge." "McGrew vs. Missouri Pac. Ry. Co., 8 I. C. C. Rep. 630"; 1 I. C. C. Rep. 230."

A careful examination of the rates, as given in the comparative statement, will show that they are in themselves very confusing. The rates in Arkansas are very much less than those in Texas. In Georgia, they begin with even a smaller rate than Arkansas; yet, when the twenty-mile rate is reached, the rates are equal, and, after that, the rates become greater than in Arkansas. In Mississippi, the rates begin with the same figures as Arkansas, but they soon pass, and for 210 miles and more are 50% higher. So, with the rates established by the commission, and attacked in this case. They begin with a smaller rate than all other States, except Georgia, continue this for several distances, then pass all other States but Texas. As compared with the latter State, they are sometimes higher, sometimes lower for a given distance. Thus, they are lower for distances between 120 to 170 miles, for 145 miles they are 11.25 to 13. They are higher for 160 miles, 13.75 to 13,

and continue in that fashion for some distances, then become equal, then lower. The existing rate on the complainant's road is the same as the Texas rate, and this can also be said for rates on distances of 290 miles and over. Between the 150 and 175 mile rate, however, the complainant's rate is higher than the Texas rate.

This analysis of the table has lead [led] me to the conclusion that the rates were not made according to any rule or principle, but to subvert some other purpose—i. e., further the interest of some locality, enabling another to meet water or other competition, etc.

I beg to refer also to comparative statement, between points in the State on the various roads, therein mentioned (D'ft's Ex. "D" 14). For convenience, I have numbered the columns 1 to 9. No. 1 was established in 1902. For distances up to 10 miles, Nos. 3, 4, 7, 8 and 9 agree with it. Up to 20 miles, Nos. 3, 7, 8 and 9 agree with No. 1. No. 2 begins with less than No. 1, but soon catches up. These are other indications that the rates were established to meet local conditions or competition, etc. The rate attacked, No. 9, is lower than any which prevails on any other road, though all of them have been established by the commission.

The evidence on the subject is by defendant's witnesses, Hamilton, *et pp.* 92 *et seq.*, 116 *et seq.* Defendant's witnesses, Drown, *pp.* 287 *et seq.*; Brawshaw, *pp.* 152 *et seq.* There is nothing in what they say which serves to explain the discrepancies, or—what is more important—to show that the rates in other States, or, on other roads in this State, are for services rendered under similar conditions to those existing on complainant's road, and, without such evidence, the table of comparison is of no value to show that the rates attacked are reasonable and fair, and, as I take it, that is the only purpose for which the comparative statement were filed.

Mr. Redfield has annexed to his deposition, Exhibit "C," which is a comparative statement, showing in four sets of columns the rates on cotton seed and cotton seed products.

The first set of three columns show the present rate in Louisiana on the complainant's road. The second set gives the rates here attacked. The third gives the rates in Texas on complainant's road and the fourth gives the prevailing rates on the "M. K. & T.

49 Railway" in Indian and Oklahoma Territories (a duplicate of this comparative statement is also filed by the defendant as Exhibit "D" 12, and may there be consulted with greater convenience).

In his answer to the ninth interrogatory, Mr. Redfield says:

"The conditions surrounding the marketing of the seed and the manufactured product of same are substantially similar to those existing in Louisiana. In fact, if there is any difference, the difference is in favor of the Louisiana shipper, as the cost of raising cotton is less in Louisiana than in the States and territories named as labor and supplies are cheaper in Louisiana than in Texas and the territories. The Louisiana shippers have a further advantage, in that they are nearer to the principal markets for the products and have less rail haul to pay and their rates upon the products ex-

ported or shipped to other markets are usually much less than from Texas, Indian and Oklahoma Territories."

In his answer to the eleventh interrogatory, Mr. Redfield testified that this comparative statement is made up from the tariff of rates actually in force for several years, the Texas rates being the rates promulgated by the Texas Railroad Commission. All of the rates in said State and Territories, as shown by said statement, are much higher than the proposed rates of the Louisiana Railroad Commission." (Writer's italics.)

Mr. Redfield and Mr. Barrow for defendants (answer to question 31, p. 14) seem to contradict each other on the relative rates. I find Mr. Redfield's statement borne out by figures. Only in the first four distances is the rate on seed alike for the Texas and Louisiana; for all other distances, the rate is higher, except for distances ranging from 190 to 215 miles. For those distances, the rates fixed by order 484 are less than the rates fixed by the "Texas Commission," but both before the 190 mile rate and after the 215 mile rate, the Texas rates and those in the Territories seem to be higher. In fact, as I have said before, the rates for various distances are apparently affected with a tendency to benefit some mill, or to enable the carrier to meet some competition. It may be wagon, or water or another railroad,—anyway, it makes comparison more difficult, and less useful for our purpose.

I have examined all the tables and statements with great care. In the absence of evidence, showing that like conditions prevail, comparisons throw but little light on the problem; yet, take it all in all, it is my opinion, that the rates established by the defendant commission in order 484 are lower than the rates which  
50 prevail elsewhere. Here and there, we find equality; it may be that, here and there, we will find a lower rate; yet as a whole, taking the traffic of, say, four hundred miles, and considering all the rates for various distances, I hold that Mr. Redfield is correct in his statement, that the rates in Texas and the Indian Territory are higher than the proposed rates of the commission.

### VIII.

Considerable evidence has been taken to show that the rates in existence at present on complainant's line are excessive, that they favor certain mills and localities, and especially that they discriminate against New Orleans. The complainant's witnesses deny this. They assert that, considering all the circumstances, the rates are fair and reasonable; that, if they militate against New Orleans, it is not because the rates are discriminating, but because circumstances favor the local mills, and that New Orleans has lost in receipts of seed, not because of the prevailing rates, but because in the last eight or ten years cotton seed mills have been erected throughout the country, and that those mills being nearer the field and ginneries, furnishing the seed, are more apt to get it, etc., etc.

Pretermittin for the moment any extended review of the evidence on the subject, and the causes for the existing condition, it is well

to say, that it is difficult to see how, even if it were admitted that the present rates are unfair, unreasonable and discriminating, such an admission would tend to show that the proposed tariff is fair and reasonable. Certainly, the fact, that a given price for a certain service is excessive and unreasonable, does not establish that another and much lower price for the same service is fair and reasonable. One may be unreasonable and unfair as excessive, and the other be unreasonable and unfair as being unremunerative. The only difference between the two is, that the excessive price is unfair to one, the unremunerative price is unreasonable to another. Both may be unfair, unreasonable and unjust.

It is this which, in my opinion, destroys the force of the evidence adduced to show how one locality prospers at the expense of the other, under the existing tariff. Nevertheless, I will briefly examine the evidence.

The attack on the existing, and the consequent advocacy of the proposed rates, comes principally from the mills located in New Orleans. See orders 406 and 457, given in paragraph II of this report.

51 The witnesses for the defendant commission, with but two exceptions, Hamilton and Barrow, are all connected with mills in Gretna and New Orleans, and all unite in saying that cotton seed receipts, in New Orleans, are in the past few years much smaller than they were, and they are unanimous in holding the existing rates on complainant's road, as being, largely at least, the cause of the decrease. (Hauser, p. 199; Bradshaw, p. 129).

The evidence of defendant's own witnesses (Bradshaw, p. 194; Hamilton, p. 127) admit that river receipts have also fallen off, and Mr. Hamilton candidly attributes the material loss in river receipts "to new mills being built on the railroads which parallel the rivers."

There is nothing in the record which shows that the water rates are considered as discriminating against New Orleans, nevertheless, the receipts from that service have also fallen off. It is, therefore, manifest that some other cause than the existing rates on complainant's road, has contributed to the decrease in receipts.

What this other cause is, is also shown in the evidence of Mr. Hamilton, a witness for defendant, who has for many years been engaged in the cotton seed business in various portions of Louisiana, and is, at present, manager of an oil mill at Pointe Coupe, and president of a milling company at St. Joseph, and interested in a mill at Baton Rouge. (Def'ts, p. 49) He is also president of the Louisiana Cotton Seed Crushers' Association," and his evidence shows all the way through his entire familiarity with the business.

On p. 7, et seq., he testifies, that for a distance of 110 miles from New Orleans the rate is \$1.25, against \$2 by river. This he admits is a favorable rate for New Orleans, but it appears that there is but little seed within that section (p. 67). The heavy movement of seed on complainant's road is in the section between 120 and 200 miles. At p. 70, he is asked:



Q. 110. Do you, or not, know that as a result of the rate on the Texas & Pacific Railway for distances above 120 miles, the New Orleans mills are practically out of that market?

A. They are not out of the market so much on the present rates anywhere between New Orleans and Alexandria, and New Orleans and Farriday, on account of the rates, as much as on account of the difficulty in buying at that distance and the scarcity of cars.

(Alexandria is 194 miles distant from New Orleans; Farriday is 194 miles distance from New Orleans.)

52 Again, at p. 90, et seq., he testifies that the receipts of cotton seed in New Orleans have fallen off, although the production has increased and his reason for the decrease is answer to Q. 239: "Mills are being built in the interior on the line and get the preference."

Again, at pp. 86, et seq., Mr. Hamilton's testimony shows, that it is not the freight rate which is militating against New Orleans. The New Orleans mills can pay \$1 to \$1.50 more for seed than the country mill, because they are more fortunately situated for the disposal of product. In the city, the product is manufactured almost at ship's side, while it cost the country mill a dollar to a dollar and a half to get it there (p. 87).

I mention these things only to show, that, if there is discrimination against New Orleans, this discrimination is not satisfactorily shown by the decline in receipts.

Mr. Redfield—a witness for the complainant—testifies that among the factors which he considered in making up the existing schedule of rates on cotton seed products, was the fact that if seed went to interior mills on complainant's line, the road would get not only the short haul on the seed, but also the haul of the product to New Orleans; while the haul of seed to New Orleans completes the transaction (see answer to interrogatory third and answer to eleventh cross interrogatory). In the latter he says:

"If the effect of a tariff is to divert cotton seed from the local mills along the line of the Texas & Pacific Railway Company, where the Texas & Pacific Railway Company would get to haul the product of same, and divert the seed to New Orleans, where the Texas & Pacific Railway would not get to haul the product of same, then unquestionably it would be more profitable to haul the seed a short distance and get the product. Not only would it be more profitable in the matter of returning more revenue on that particular transaction, but it also builds up along the line of the Texas & Pacific Railway Company local industries which will furnish a permanent tonnage, while if the seed was diverted from these local industries to New Orleans, where it is exported direct, the Texas & Pacific Railway Company would not obtain the haul on the manufactured product, and the local industries engaged in the manufacture of cotton seed products would be destroyed. The effect of which would not only be to deprive the Texas & Pacific Railway Company from handling the product from these industries, but will also have the effect of depriving it of a large tonnage which would move to the localities where these local industries are situated in the way

of high class freight, such as merchandise, food stuffs, lumber and building material. In other words, destroy and take away from the Texas & Pacific Railway Company all the advantages incident to building up local industries along the line of its road."

To the same effect is his answer to the thirteenth cross interrogatory.

It is doubtful whether a public carrier may discriminate between localities for the purposes stated by the witness; nevertheless, the Supreme Court of Pennsylvania in *Hoover vs. Penn. Ry. Co.*, 22 L. R. A. 263, upheld the right of the carrier to charge manufacturers a lower rate on coal than it charged to coal dealers, basing its opinion on the idea that cheap coal was necessary for the building up of the local industries along the carrier's lines.

"In the matter of alleged unlawful acts," etc., 8 I. C. C. R. 121, the complaint was that local rates favored compresses along the line of the road, at the expense of those located in New Orleans and Memphis—and the commission said:

"Now, this practice of floating cotton tends to bring about exactly that condition of things. Instead of centralizing the business of compressing and handling cotton at Memphis, it tends to distribute it among the small towns throughout that section of the South. The effect is to build up many of these interior communities. They are enabled to have a compress and bank and whatever else comes along with them."

In line with the spirit of the foregoing are the views expressed by Judge Thomas M. Cooley, chairman of the Interstate Commerce Commission, in his fourth annual report, pp. 13, et seq. I quote:

"The carriers are entirely right in assuming, as they have done heretofore, that they best perform their duty to the public when they take into consideration in making their classification and fixing their rates, not merely the question of cost to themselves and of value to the owner of the property carried, but every consideration of a public nature which can fairly bear upon the question of public usefulness."

How far all this may justify any discrimination, which  
54 complainant's present tariff contains, I do not find it necessary to decide, because I repeat the fairness and reasonableness "vel non" of the existing tariff is not in issue here.

The existing rates on the "Texas & Pacific Railway Company" have been in force many years—with either the tacit or express approval of the commission. (See paragraph III of this report.) Until December, 1904, they were not attacked by anyone.

Under such conditions, there is a species of presumption, that the long established rates are fair and reasonable.

The *Nat. Hay Ass'n vs. L. S. & M. S. R. R. Co.*, 9 I. C. C. R., 264 at p. 305, and the burden of showing the charge unreasonable is on the party who proposes a change. (See *Ibid.*, 490.) In *Re Charges on Food Products*, 4 I. C. C. R. 48. (See also "*Holmes vs. Southern Ry.*", 8 I. C. C. Rep. 561.)

The case for the reasonableness of the existing rates is strengthened by the commission's order 457, given in full in paragraph III

of this report. This order was made in July, 1905, and there is no evidence in the record of any change in conditions, that would warrant the large reductions that were made in order 484, establishing the rates attacked by complainant—in December of the same year.

The complainant's witnesses testify, that, under those rates, many mills have been built along the lines of its road, that all are doing well, and the commission's order 457 recites, that the mill men, merchants and farmers were all satisfied. Bradshaw for defense, p. 170, says, mill men, farmers and merchants fought the proposed change. Traffic in seed was moving freely, the only complaint which is heard is from New Orleans, and, as has been shown, New Orleans mills attribute their loss of receipts to complainant's rates, though they receive less seed than formerly from other sources. Even, Mr. Hamilton—a witness for defendant—does not think the reduction in receipts by the New Orleans mill is due to complainant's rates. In short, the only unfairness which has ever been charged against the old rates was that they discriminated against long hauls. Substantially, no; which, on the other hand, made no complaint on cotton seed produce. (Barrow, D'ft's. Test., p. 38.)

## IX.

In find, however, that, in the tariff which is attacked in this case, the defendant commission itself establishes discriminations and preferences in favor of some and against other localities.

55 The proposed tariff adds three (3¢) cents per hundred (100) pounds to each rate that is established, unless the mill ships by complainant's line not less than fifty (50%) per cent. of the products of the seed that is hauled in. This applies to all the mills in the State, outside of Gretna and New Orleans.

There is not one word in the record which gives any reason for this concession or discrimination or preference to the New Orleans and Gretna mills, and an examination will show how unfair and unjust and unreasonable the rates become between different localities, because of the preference and discrimination mentioned.

Take the proposed rate for any distance, say, fifty miles, and compare it with the 100 and 200 mile rate. The first applies altogether to interior mills, the latter to mills in Gretna and New Orleans.

The rate for fifty miles is six (6¢) cents per one hundred (100) pounds, with three (3¢) cents per one hundred (100) pounds added, if less than fifty (50%) per cent. of the weight of the seed is shipped out in product. That is, without the more or less onerous obligations, it will pay nine (9¢) cents per one hundred (100) pounds for fifty (50) miles, while, if the seed goes to Gretna or New Orleans, the rate is 8.5 per 100 pounds for 100 miles, and fifteen (15¢) cents per one hundred (100) lbs. for 200 miles. In other words, unless the country mill obligates itself and actually does ship 50% of the seed it gets, in product by the Texas & Pacific, it will pay more per one hundred (100) pounds for the fifty (50) mile haul, than New Orleans pays for the one hundred mile haul. As compared with the two hundred mile haul, the mill in the coun-

try will pay nine (9¢) cents for fifty (50) miles, and the city mill will pay fifteen (15¢) cents for two hundred (200) miles. That is, the latter, for a haul four hundred (400) per cent. longer, will pay only sixty (60%) per cent. more freight, and it should not be forgotten that seed is loaded by the shipper and unloaded by the consignee.

I submit that these rates discriminate against the country mills.

Again the three (3¢) cents are added to the rate on every one hundred (100) pounds of seed received by a country mill, however small the original rate and haul, unless it assumes the obligation to ship out fifty (50%) per cent. of the product on the five and ten mile rate, the additional charge is as large as the original; on the ten and fifteen mile is it seventy-five (75%) per cent.

56 of the original rate, etc., etc. The result is decidedly discriminating as between localities, when, in so many words, New Orleans is excepted.

Why should a mill in, say, Alexandria or Baton Rouge or any other interior town pay eighteen (18¢) cents per one hundred (100) pounds for a hundred mile haul, while a mill in Gretna or New Orleans pays only fifteen (15¢) cents per hundred (100) pounds? It is true the interior town can have the three (3¢) cents refunded, but to do so it must ship a certain quantity of its products by the Texas & Pacific, although it might find it more advantageous to sell at home or ship by river, etc., etc.

#### Conclusion.

As I understand the evidence in the record and the law applicable, I am constrained to hold that the tariff of rates which the defendant, Railroad Commission of Louisiana, proposes to establish by its Order 484—attached in this cause—is not fair and just and reasonable; because:

First. The proposed tariff of rates would reduce the income of the complainant, though, even as it is, the income does not yield a reasonable return on the investment and is otherwise insufficient to enable the complainant to perform fully and completely the duty which the law imposes upon a public carrier.

Second. It imposes a greater charge for a fifty mile haul to a mill, outside Gretna and New Orleans, than it does for a hundred mile haul to the latter towns.

Third. The flat charge of three (3¢) cents per one hundred (100) pounds—in addition to the regular schedule—which mills outside of Gretna and New Orleans, must pay, unless they ship a certain amount of product—is grossly excessive when added to the regular rate for distances of five, ten, fifteen miles and other short hauls, as compared with long hauls, since the per cent. of increase is far greater on the regular rate for short than for the longer haul.

Fourth. That, without any reason given in the record, the tariff discriminates in favor of the mills in New Orleans and Gretna, by relieving them of the additional charge, which it imposes on all other mills, unless they comply with a more or less onerous obligation.



For these reasons and all others given in the body of the report, it is my opinion that the prayer of the complainant should be granted and I so report.

New Orleans, 6 March, 1908.

Respectfully submitted,  
(Signed)

S. WOLFF.

*Supplemental Report of Master.*

Filed March 7, 1908.

In the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division.

No. 56. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY  
vs.  
THE RAILROAD COMMISSION OF LOUISIANA.

*Supplemental Report of Master.*

To the Honorable the Judges of Said Court:

On the — day of December, 1907, I sent to counsel, representing the complainants and defendants, copy of report which I proposed to make in this case and which I file herewith, and fixed the 21st day of December, 1907, as the day on which I would receive and hear any objections or exceptions to said report which counsel would desire to submit.

At the request and by consent of all parties, the time for this hearing was extended to Saturday, the 4th day of January, 1908, when counsel for defendants submitted their exceptions and objections (which I also file herewith) with argument, and time to answer was given counsel for complainant.

On the 19th day of February, 1908, the case was fully submitted to me. I file, herewith, memorandum submitted by counsel for complainant.

I have examined with great care the exceptions submitted by counsel for the defendant and, after reviewing the whole case, beg to supplement my principal report by taking up and considering, seriatim, so far as possible, the various objections urged.

58 Section 2 of the exceptions states the first objection to the report as being "because neither the state of the pleadings nor the claims of the complainant, as made in its bill, justify the same."

(a) State of Pleading. The pleadings in the case consist of the bill, the answer and replication, and, as I understand them, these pleading adequately present the issue in the case.

(b) The Claims of Complainant As Made in the Bill. The prayer of the bill is that the Railroad Commission of Louisiana and the individual members thereof be enjoined

"\* \* \* from putting or continuing in force or effect so far as your orator is concerned, the said tariff of rates promulgated on December 13th, 1905, and made effective February 1st, 1906, and designated as Order No. 484 \* \* \* and that tariff of rates \* \* \* be canceled and declared to be null and void and of no effect, by the decree of this Court."

As I take it, these are the claims of the complainant as made in the bill and the issue before the Court as made up by the bill and answer, is, whether the defendant should be enjoined as prayed for and whether the order, designated as No. 484 and the tariff of rates, should be declared null and void and of no effect.

All the evidence which was taken, all the arguments—both oral and by brief—was had by the parties for that purpose alone. The complainant sought to show that the rates were unreasonable, unjust and unfair and should therefore be annulled, etc.; while the defendant endeavored to rebut the showing made by the complainant.

It is, therefore, difficult for me to see why it should be urged that the complaint made in the bill and the relief prayed for to remedy that complaint do not justify a finding which agrees with the prayer in the bill. This finding may or may not be reversed it may not be adequately supported by the evidence, but it does not go beyond the claims and prayer, and is not ultra petitem, and as I take it, this is the effect of the statement in Section Two of the Exception, that the claims of the claimant as made in the bill do not justify the finding of the principal report.

The sentence of Section 2, p. 2, immediately following the sentence already considered, is

59 "Nor would the testimony taken, relied on the Master and reported of itself, justify the finding that the proposed rates would be unfair or unreasonable."

an adequate answer to this objection involves necessarily a consideration of the whole case; it is an application for a rehearing, based upon no special objection or exception to the principal report. Such special objections are, however, urged and I consider the objection quoted in connection with my consideration of the special objections and exceptions urged by the defendant.

Par. A, page 3 of objections filed by defendant, is fully answered by the quotation I made in the original report—p. 21—from the opinion rendered by Mr. Justice Brewer in *Chicago & N. W. Ry. vs. Dey.*, 35 F. R., 883. To hold with the defendant that the rates established by Order 484 and here attacked would increase traffic, and that thus complainant's income would be increased or at least not diminished, though, the rates attacked be lower than the rates which the defendant sought to change, would be to hold in the very teeth of the doctrine as laid down by an Associate Justice of the Supreme Court of the United States.

I am thus constrained to reject this contention, even if I assumed that traffic would be increased; but I am not convinced that in-

creased traffic or revenue would result from the establishment of the rates proposed by the commission.

We are not here dealing with an industry or product which could be developed or increased by a favorable rate and all that. The volume of the commodity affected by the schedule, is—at least not to any great extent—not subject to increase or decrease by the rate of freight. The quantity of cotton grown is not at all dependent on how much it costs to market the seed, a considerable advance in the price of seed—which price is not altogether dependent on freight rates—may bring out a comparatively small quantity of seed which would otherwise remain on the farm; but, on the whole, the quantity of cotton-seed marketed depends on the size of the cotton crop, which, I repeat, is not influenced by the price which the seed will bring. The quantity of seed to be moved not being influenced by freight rates, it must for our purpose be considered as fixed, and as I read the evidence the only effect of the proposed rates would be to increase long hauls, decrease short hauls and diminish complainant's revenue from the products of cotton-seed. Any increase in

60 revenue—if increase there should be—would come not from increase in volume, but because a larger part of the seed would be hauled a long distance, and so pay more freight even under the lower schedule. This possible increase would be offset by the diminution in quantity of products hauled away from the mill, as the long distance points—New Orleans and Gretna—possess and use facilities for its disposal, other than complainant's line; while the interior mills (the short haul points) both, because frequently the complainant's line is the only outlet and because of the increased freight rates on seed which they must pay even under the commission's schedule, when they don't ship product by complainant's line (see Par. IX., p. 31 of original report) are compelled to use the facilities furnished by "The Texas & Pacific Railway Company." Weighing all these considerations, I seriously doubt whether there would be any compensation resulting from the commission's rates which would offset the loss caused by the reductions made by those rates.

Par. b (p. 3) of defendant's objection to the main report is an attack on the rates in existence on complainant's line. What I have said in my main report—Sec. VIII, p. 26—and in my answer to objection, Par. A, of defendant's objection, disposes of this contention.

Par. c (p. [pp.] 3 and 4) of defendant's objection to the main report, I answer by saying that the proposed tariff is attacked all along the line. The flat charge of three cents (3¢) per one hundred (100) pounds, regardless of distance, is unfair and unreasonable and highly discriminatory when applied to interior mills and not to those in Gretna and New Orleans. That being a flat rate, it doubles some rates, while it adds a less and constantly diminishing percentage as the charge advances according to distance, and, while it is true that the present tariff also charges a flat rate of three (3¢) cents, it, at least, makes no difference in imposing it between the interior mills on the one hand and Gretna and New Orleans mills on the

other; besides this, I am not concerned with the reasonableness and fairness vel non of the existing rates. Counsel is in error in his claim that there was no objection to the flat three-cent. rate—on p. 73, Mr. Hamilton, a witness for defendant, says:

Q. Do these mills complain of that three cents for 100 pounds?

A. Yes, sir; they hold your money.

Par. d (p. 4) of defendant's objection. I have not been  
61 referred to, and have not found any case in which it is held that cost of service is a factor in determining the fairness and reasonableness vel non of a rate on a particular commodity, moving on a part of a carrier's route. There is not and in the nature of the case there cannot be any practical way of establishing the cost of such service. Must, we, for that purpose, consider the whole interest charge on the value of the particular section of the road devoted to local traffic, or shall some part of the interest charge go to traffic, using the entire line? If the latter, what part shall be charged to one and what part to the other? Assume, you have found the value of the part; that you have fixed the proportion of the interest charge, cost of maintenance, operation of the trains, which traverse and go beyond the locality—I say, assume all that and have thus established the cost of the entire local service, you have yet not solved the problem—for the local traffic consists of the carriage of many articles; how will you fix, with any reasonable accuracy, the precise portion of the cost of service, which you will charge, upon any given article? The problem is so complex that cost of service can not be considered a factor in determining a rate on a given commodity, moving locally.

"The case of a railroad estimating the cost of doing a particular piece of business is not unlike that of a lawyer estimating the cost of giving an opinion." Railway Practice, p. 3.

and an enlightening discussion of this phase of rate making, will be found in "American Railroad Rates" by Noyes, p. 38, et seq.

Pars. E F (p. 485) of defendant's objection. I have in the principal report shown of how little practical value the cost of an entire railroad system is for the purpose of establishing what is or what is not a reasonable rate on a single commodity. Much that I have said in answer to Paragraph "d" of the objection is also applicable, and, as I view the subject, it would not serve any useful purpose to go into an elaborate discussion of cost of the entire system or of its branches.

I repeat part of the citation already made in the main report (p. 17) from 10 Int. C. C. Rep., 530:

62 "The value of the entire property of a road can shed but little, if any, light upon the question, whether the rate on a single among thousands of articles of traffic yields its proper proportion of a fair return on that value."

Assume that we could fix the value of the branches and that part of the main line over which cotton-seed is transported, how, even then, can we fix what part of that value is to be taken for the carriage of freight, going over the entire line, of other commodities than cotton-seed going over the same branches and parts of the



line as cotton-seed. Consider how much of the value of the branches and part of the main line you will charge to passenger traffic, and, I submit, it is practically impossible to apportion all these things so, that one can say with any degree of even approximate precision, what part of the value of the branches and main line we should take as the basis for a finding of what is a fair and reasonable rate on cotton-seed which, after all, yields only 0.54 per cent. of the revenue earned by the entire system.

In connection with this I desire to admit my error in computing the per cent. of the income on p. 18 of the principal report—it should be 4.6 per cent. instead of 0.46. This error destroys any force which may be in my declaration (p. 19, pf, main report) that

“Even if we assume the cost of the road to be twice its present value, and there is nothing in the record upon which to base the assumption, the income on value would still not be one per cent.”

That its income cannot safely be diminished may be inferred from the fact that no dividend has ever been paid on its stock, and that more money than the company obtains from revenue is needed for improvements, etc. See Thorne's dep., pp. 2 and 3. The yearly reports for 1902, 1903, 1904, 1905 are in evidence, and nothing in those reports, which I have examined with some care, seems to contradict Mr. Thorne's summing up of the situation.

Par. A (p. 5) of defendant's objections on p. 19 of the principal report, I give certain statistics from the testimony of one of complainant's witnesses, and here I give some taken from p. 9 of the Annual Report of Complainant Company, referred to in testimony of Mr. Thorn, as Exhibit “D.”

As compared with 1904 there was a loss in gross receipts on the Louisiana Division of \$489,811.49, while, on both of the  
63 other divisions of complainant's road, there was a gain of, respectively, \$15,179.56 and \$171,875.41.

The same page shows that as compared with 1904, the net earnings in Louisiana showed a decrease of \$453,064.97, while on the Eastern Division (Texas) the loss was only \$32,215.87, and on the Rio Grande Division there was an increase in net earnings over the previous year of \$84,050.57. But 1905 was hardly a normal year, because of quarantine restrictions.

It is not possible from all the figures and statistics and certainly not from any part of them to come to any absolutely correct conclusion about the rate on cotton-seed, but, when we find that the net revenue per mile in Louisiana is less than that for either the entire system or for Texas alone (main report, p. 11) that in Louisiana there is a decrease in both gross and net revenue for the year 1905, as compared with 1904, while other divisions show either a much smaller decrease or a considerable increase (Report, 1905, p. 9) that the rate on cotton-seed has declined since 1896, 0.29 cents per ton per mile, we may reasonably draw the inference that there is nothing in the showing to warrant the defendant in forcing a decrease in the revenue of the complainant.

Par. H. (p. 6) of defendant's objections. Mr. Bradshaw testifies

(Dft.'s Test., p. 131) that, until 1904, New Orleans mills obtained considerable quantities of seed from Alexandria and points south of it, that from Port Allen the rate was \$1.50 a ton, that, since 1904, the rate for the various distances is 14 to 17 cents a hundred, i. e. \$2.80 to \$3.40 a ton. Mr. Hauser (Dft.'s Test., p. 200) testifies to about the same condition, and it is not denied by any one. Mr. Braggins (Comp.'s Test., p. 29) gives the reason. Until 1902 there was no mills at those points, and, if the T. & P. wanted to haul cotton-seed at all it had to carry it to New Orleans. To carry it there, however, the railroad had to meet river competition, hence the low rate. When the interior mills were built this condition came — an end. The complainant could carry seed to the local mills at rates unaffected by water competition. On the application of complainant and Mr. J. C. Hamilton—at present a witness for defendant—the complainant was permitted to take out the \$1.50 rate to New Orleans. Presumably, the commission permitted this, because as will be seen from the table of rates established at the time, the rates to interior mills for distance 100 miles up were \$2.70 per ton, and when the special rate of \$1.50 per ton was taken from New

64      Orleans it was put on an equal mileage basis with interior mills. In other words, the erection of the interior mills relieved the carrier from the necessity of competing with river rates to obtain the carriage of cotton seed, and New Orleans was thereby deprived of the favorable position that she had until then occupied. (For rates, see Dft., Ex. "D" 41.)

Mr. Hauser (Dft. Test., p. 205) further testifies that the Southern Pacific has the same rates as the complainant—yet the defendant commission does not seem to have taken any action.

In the main report (Par. VIII, pp. 26, 27) I have already discussed the shrinkage in receipts of cotton-seed at New Orleans. Let me here call attention to Mr. Bradshaw's evidence (Dft.'s Test., p. 144) that the rates on the Northeastern for distances up to 150 miles is \$2.00 per ton. On the Illinois Central it is but \$1.60 per ton for the same distance, and yet—though the New Orleans and Gretna mills want all the seed they can get—not much effort has been made to get seed along these lines. There is nothing in the evidence to explain this peculiar condition, but as I said in the main report there is evidently some other cause for the decline in receipts in New Orleans than the rates of the complainant.

Par. I (p. 6) defendant's objections. Nothing said in the objection affects the unfairness of the flat or concentration charge of three (3¢) cents per hundred pounds on all distances and to all mills, except those in New Orleans and Gretna. It would be unfair even if applied to the New Orleans and Gretna mills, because the freight rate on the actual movement—i. e., 100 miles and further—would make the per cent. of increase in rate, by the imposition of the concentration rate, very small, while, on the smaller freight rate for shorter distances, the per cent. of increase would be considerable and would increase as the distance decreased. It is absolutely unfair when New Orleans and Gretna are entirely relieved.

Par. J. (p. 6) defendant's objections. Counsel for defendant

does not point to a single authority to support the contention. In the principal report I have carefully analyzed such cases as were cited by counsel in their memorandum of authorities, and such cases as I found myself, and a review of all those cases has served to confirm me in the conclusion set out in the main report. (Par. V, p. [pp.] 12-16).

Par. L to O (pp. 7 and 8) defendant's objections. I have most carefully considered and reconsidered every point made in these objections and believe they have all been answered by anticipations in the principal report.

Section 3 (pp. 8 and 9) defendant's objections. Much that is said in this section has already been said elsewhere in the objections and has been answered, as seemed to me right. Suppose the country mills did not object to the concentration rate, is it not within the pleadings in this case to consider the schedule established by the commission and attacked by complainant from every standpoint? As I understand the jurisprudence on the subject, Courts will consider this class of questions in the broadest possible spirit. They admit evidence with but little regard to the rules of evidence which control in ordinary legal proceedings; witnesses are permitted to give opinions, reasons for conduct; they are permitted to tell what motives influence them in making up a schedule or what the effect of a schedule may be, and if the parties to the cause may do this, the master, in deciding the issue, should be allowed the same latitude. But, even narrowly considered, the complainant has a live interest in the flat rate as fixed by the commission. The schedule in existence charges the concentration rate to everybody—New Orleans and Gretna included—while the schedule established by the commission exempts those points. Complainant's interest is therefore quite clear, for not only would this exemption deprive it of the charge, but it would further relieve the New Orleans mills from the necessity of shipping a certain proportion of product by complainant's line. Nor is it quite true that no one has complained. Mr. Hamilton, witness for defendant and who from his position may well be considered a representative of the country mills, distinctly declares himself opposed to the concentration rate (Deft.'s Test., p. 73) and it should not be overlooked, that he was the only one interested in interior mills who was present at any of the hearings before me.

The charge that the rates in existence are themselves unfair is hardly before me, except in the way, I have already discussed in the main report. (Par. VIII, p. 26).

Nor is the data as to mileage and net earnings for 1904—an admittedly normal, and I think rather prosperous year—just as the objection gives it.

Exhibit "C" attached to Mr. Thorne's report, on p. 7, gives the mileage for Louisiana, as follows:

Main Track .....	695	
Sidings .....	214	
Total .....	—	909 miles

66 for the rest of the line

Main Track .....	1,131	
Sidings .....	271	
Total .....	1,402	
Grand Total ....		2,311 miles
Of which Louisiana has .....		39.33%
Rest of Line .....		60.67%
Net Earnings, p. 9		
For Louisiana .....	1,990,121.80	
" Rest of Line .....	2,331,333.66	
Total .....		4,321,455.46
" Louisiana .....		46%
(not 80% as the objection has it)		
" Rest of Line .....		54%

In other words, while the trackage of the road, outside of Louisiana is, say, fifty per cent. greater than in Louisiana, the net earnings are not quite 10 per cent. greater. For 1905 the showing in Louisiana was far less favorable, but in that year the Louisiana business was affected by quarantine.

This quite favorable showing for earnings on the Louisiana Division loses in force, when we instead of grouping into Louisiana and the rest of the line, group as the plaintiff company itself does namely:

Eastern Division, Rio Grande Division, Louisiana Division — so grouped, the net earnings per mile for 1904, are:

Rio Grande Division .....	\$1,156.26
Eastern Division .....	2,130.76
Louisiana Division .....	2,206.75

for 1905, the showing is

Rio Grande Division .....	\$1,263.33
Eastern Division .....	2,130.76
Louisiana Division .....	1,658.08

but 1905, as already said, was so-called yellow fever year, and the returns are not normal. The preceding year, 1904, is a better standard, and, as is seen, the net earnings on the Louisiana Division are but 17.44 more per mile than on the Eastern Division, an increase which hardly justifies a rearrangement of rates. The Rio Grande Division should not be considered, as by far, the largest part of it runs through a sparsely settled country and the results should not be taken as furnishing a standard for the Eastern or Louisiana Division. The latter two appear to be about equally well settled, and may thus be properly compared.

I have set out all the data here and refrain from giving much more of a like character, which I have compiled and considered, in the hope that I would find somewhere some mathematical basis for a finding, but I have not been able to do so. As it is I do not find the figures of assistance here.



Objections 5, 6, 7, 8 and 9 have, I think, been adequately answered, either in this supplemental or in the principal report.

On page 20 of the principal report, I desire to make the following change in paragraph, beginning with "From these facts." It should read as follows:

From these facts it follows as a legal conclusion, that where an income without mismanagement, extravagance or dishonesty, suffices only to pay interest on the mortgage bonds and indifferently to maintain the property, leaving nothing for dividends to stockholders, it should not be still further reduced, particularly, where the reduction would mean a still further failure to maintain the property so that the company's duties, as a public carrier, could be adequately fulfilled.

I would, of course, have been glad to find either a fixed legal principle or a mathematical basis on which to rest my conclusion. As I read the discussion of the subject in the cases and text-books, this is not possible either in the instant case or others of a like character.

All that can be done is to view the subject largely, as a whole. So viewed, I am constrained to adhere to the conclusion reached in my main report, namely, that the prayer of the complainants should be granted.

New Orleans, March 6th, 1908.

Respectfully submitted,

(Signed)

S. WOLFF,  
Special Master.

68 *Notice of Filing Master's Report and Supplemental Report.*

Extract from the Chancery Order Book.

SATURDAY, March 7, 1908.

No. 56.

B. R. D.

THE TEXAS & PACIFIC RAILWAY COMPANY

VS.

THE RAILROAD COMMISSION OF LOUISIANA.

The parties in interest are hereby notified that Solomon Wolff, Esquire, Special Master in this cause, has this day filed his report and supplemental report in the said above cause, and has returned into Court all of the testimony, exhibits, exceptions and other papers filed before him.

*Note of Evidence Offered by Complainant.*

Filed November 19th, 1907, Before the Special Master.

No. 56.

B. R. Div.

THE TEXAS & PACIFIC RAILWAY COMPANY  
VS.

THE RAILROAD COMMISSION OF LOUISIANA et al.

THE TEXAS and PACIFIC RAILWAY COMPANY  
VS.

RAILROAD COMMISSION OF LOUISIANA et al.

The Texas and Pacific Railway Company, complainant herein, submits the following evidence:

First. Deposition of H. L. Redfield.

Second. Deposition of E. W. Tower.

Third. Deposition of C. Ludolph.

Fourth. Deposition of L. S. Thorne.

Fifth. Evidence of W. F. Braggins.

69 *Deposition of H. L. Redfield, a Witness for Complainant, Residing in the City of Dallas, Dallas County, Texas, Taken under Agreement of Counsel Before W. H. Cope, Notary Public, Dallas County, Texas, on the 23rd Day of October, A. D. 1906, and Filed March 7th, 1908.*

No. 56. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY  
VS.

THE RAILROAD COMMISSION OF LOUISIANA et al.

Baton Rouge Division.

Messrs. Howe, Spencer & Cocke and T. J. Freeman, for Complainant.

Hon. Walter Guion, Attorney General of Louisiana, for Defendants.

Direct Examination:

1. What is your name, age residence and occupation?

To the first interrogatory the witness answers:

H. L. Redfield; 38 years of age; reside at Dallas, Texas, and am assistant general freight agent of the Texas & Pacific Railway Company.

2. How long have you been in the service of The Texas & Pacific

Railway Company and in what capacities, and how long have you been assistant general freight agent of said company?

To the second interrogatory the witness answers:

Have been in the employ of the Texas & Pacific Railway Company about 21 years; in the capacity of messenger in general freight department; stenographer; rate clerk about six years; chief clerk in general freight agent's office about four years, assistant general freight agent about nine years.

3. What are now and what have been your duties as assistant general freight agent?

To the third interrogatory the witness answers:

I have and exercise a general supervision of the general freight office, including the making of tariffs, rates and divisions upon interstate traffic, and a general supervision in the matter of formulating tariffs and rates on state traffic under the control of the various railroad commissions in the states through which the Texas & Pacific Railway runs, to-wit, Arkansas, Texas and Louisiana.

4. Have you a copy and if so attach same as a part of your answer to this question of the tariff of rates in effect in Louisiana on cottonseed and cotton-seed products at the time the Louisiana Railroad Commission issued their order No. 489 and 484, which are attacked in this suit? Also state whether or not you assisted or made up said tariff? If you have such tariff, please attach same hereto marked Exhibit "A" as a part of your answer to this question.

To the fourth interrogatory the witness answers:

I have a copy of such tariff and attach it hereto, marked Exhibit "A." I assisted in making up said tariff.

5. If you have answered that you assisted in making up said tariff, then please state what factors or conditions were taken into consideration in making up said tariff?

To the fifth interrogatory the witness answers.

In making up said tariff the physical conditions peculiar to the movement of the traffic were considered, after taking into consideration the elements of cost of performing the service and the fact that the commodity moves at a time when there is a demand for all of our equipment; I also took into consideration the location of the various mills along the line of the road; the location of markets and the ability of the traffic to stand the rates as fixed; also the further fact that in moving the seed to a particular mill from practically a defined territory, we expected to handle the manufactured product outbound from said mill; also took into consideration the fact that the local mills along our lines in Louisiana were in competition with mills located in adjacent states, which other mills had local advantages which were protected by local rates and conditions. I also took into consideration obtaining a reasonable return to the company for the service rendered in moving the traffic, and in connection with this factor I took into consideration the question of the traffic moving freely under the rate and under competitive conditions. After considering all of these conditions the present rates were put into effect and after years of operation under same the Louisiana mills along our line of road have pros-

pered and are still prospering. The traffic has freely moved under said rates and under competitive conditions. In connection with these rates we attempt at all times to preserve and protect the local situation by making interstate rates on seed to mills in other states and in a short distance of the Louisiana territory as high as possible consistent with being reasonable so as to protect as much as possible the local territory of the Louisiana mills.

6. If you have stated that you took into consideration certain factors and conditions in making up said tariff, then state if after taking into consideration the various factors and conditions set forth in your answer whether or not the rates now in effect are, in your opinion, reasonable, just and fair rates on the commodity named? If you answer that they are, then state your reasons for such answer fully.

To the sixth interrogatory the witness answers:

I state that the rates in effect are reasonable, just and fair, and my reasons for so stating are as follows: 1. The fact that the commodity moves and readily moves upon the rates and in competition with the same character of business in other adjacent states. 2. The fact that the shippers and dealers in said commodity are ready at all times to purchase the commodity and move it upon the rate as charged and are enabled to make a large profit out of the handling of this commodity under the present rates. A rate that promptly and readily moves a commodity under competitive conditions and that enable the purchaser, dealer and manufacturer in same to earn a fair profit, and which enables the carrier to earn a fair return for the services performed, is a reasonable rate, and the rate now in effect accomplishes this purpose. It also enables the producer to receive a fair profit for the raw product.

7. Please state what other factors, if any, you took into consideration in making up the present tariff of rates in addition to those you have already cited?

To the seventh interrogatory the witness answers:

In addition to those already recited we further took into consideration the fact that we are entitled to handle the manufactured product of the seed. The proposed rate of the Louisiana Commission eliminates this factor to a large extent by reducing the rate to

72 New Orleans and Gretna, and excepting New Orleans and Gretna from that provision of the tariff which makes it necessary for fifty per cent of the products of the seed handled in to be shipped out over the line moving the seed. Under this exception the Texas & Pacific Railway Company would obtain no revenue except upon the in-bound seed when going to New Orleans and Gretna. The effect of this is also to give to New Orleans and Gretna an advantage over the interior mills. A large proportion of the manufactured product of the seed, to-wit, oil and cake is marketed in the City of New Orleans and Gretna, and is not forwarded by the line of the Texas & Pacific to any point on the Texas & Pacific and to a very large extent it is exported direct from New Orleans and Gretna by the mills at those points. Under these conditions the Texas & Pacific Railway Company would get practically no revenue



from the manufactured product of the seed. When the manufactured product is shipped from the interior mills the Texas & Pacific Railway Company in addition to handling the seed, handles the manufactured product and obtains revenue from handling both the seed and the manufactured product.

8. State whether or not you have had prepared a comparative statement showing the actual movement of cotton-seed and cotton-seed products under the present tariff of rates and the revenues derived therefrom for the year ending December 31st, 1905, and the reduction that would have been made in said revenue had the commodity moved under the proposed commission tariff which is contested herein? If you state that you have had such statement made out, then please attach same as a part of your answer to this question, marked Exhibit B; also state fully how said statement is made up and what said statement shows?

To the eighth interrogatory the witness answers:

I have prepared from the records a statement showing the actual movement of the traffic on the rates now in effect; the amount of traffic moved under the rates now in effect for the year ending December 31, 1905, and the actual revenue derived from the movement of the traffic under the present rates, and also the revenue that would have been derived from the movement of same under the commission's proposed rates. This statement shows that the total number of cars handled was 2,876; weight of commodity 113,593,061 pounds; revenue derived from the actual movement under tariff,

\$114,619.47; the revenue that would have been derived under

73 the proposed tariff of the Louisiana Commission, \$90,823.52; difference between revenue that was actually received and revenue under the proposed tariff, \$23,795.95. This shows a reduction in revenue based on the actual movement of the traffic of about twenty-one per cent. In this connection I would state that the tonnage of seed and its product in Louisiana for the year ending December 31, 1905, was short as compared with normal seasons, and that in ordinary seasons there would be an increased tonnage and an increased loss. In this connection I would further state, as is shown by the statement, that greater proportion of the cotton-seed moved moves only a short distance. Of the entire movement only in a comparatively few instances did the distance exceed forty miles. The commission's proposed tariff for forty miles is five cents per 100 pounds net, as against the present tariff of eight and three-fourths cents net per 100 pounds, thus making a reduction of forty per cent. in the present rates and a reduction of forty per cent. in the revenue on the bulk of the movement. In many instances, as shown by this statement, the reduction exceeds forty per cent., amounting in some instances, on the product for long hauls, to more than forty-six per cent., and in this instance the movement is a heavy movement of the commodity. On the actual movement of cotton-seed to New Orleans for the year ending December 31, 1905, the proposed reduction in rates would amount to a reduction of about 25 per cent. in the revenue, and the Texas & Pacific would receive no revenue whatever from the manufactured products of this seed. Said state-

ment is hereto attached, marked Exhibit "B" and make a part of my answer to this question.

9. What is the largest cotton producing state in the United States? If you have stated that Texas, Indian Territory and Oklahoma Territory are the largest producers of cotton in the United States, then state whether or not the conditions in those states and those territories in the manner of marketing cotton-seed and the manner of marketing the products of cotton-seed are similar to those of marketing cotton-seed and cotton-seed products in the State of Louisiana?

To the ninth interrogatory the witness answers:

Texas and Indian and Oklahoma Territories are usually reported together in the matter of cotton production, and Texas and Indian and Oklahoma Territories, together, raise about one-

74 third of the entire crop of cotton in the United States. As I have stated, Texas and Indian and Oklahoma Territories are the largest cotton raising territories in the United States. The conditions surrounding the marketing of the seed and the manufactured product of same are substantially similar to those existing in Louisiana. In fact, if there is any difference the difference is in favor of the Louisiana shipper, as the cost of raising cotton is less in Louisiana than in the state and territories named, as labor and supplies are cheaper in Louisiana than in Texas and in territories. The Louisiana shippers have a further advantage in that they are nearer to the principal markets for the products, and have less rail haul to pay and their rates upon the products exported or shipped to other markets are usually much less than from Texas, Indian and Oklahoma Territories.

10. Please state, if you know, whether or not the oil mills in Texas, Indian and Oklahoma Territories have prospered under the rates in effect in that state and in those territories? Has there been an increase in the number of mills in that state and those territories under the rates in effect during the last five years?

To the tenth interrogatory the witness answers:

I am acquainted in a general way with the condition of the oil mills in Texas and Indian and Oklahoma Territories, and they have prospered under the rates in effect in that state and in those territories, and there has been an increase in the number of mills in that state and those territories during the last five years.

11. If you have made a comparative statement showing the rates now in effect in Texas, Indian and Oklahoma Territories as compared with the proposed rates of the Louisiana Railroad Commission on cotton-seed and its products, then please attach said statement as a part of your answer to this question, marked Exhibit C; also state what said statement shows; also state about how long such rates have been in effect; also state whether or not such rates are higher or lower than the rates proposed by the Louisiana Railroad Commission; also state any other fact or thing concerning said comparative statement and rates set forth therein that may bear in any way on the issues involved in this suit?

To the eleventh interrogatory the witness answers:

75 I have prepared a comparative statement of such rates and attach same hereto, marked Exhibit "C," and make same a part of my answer to this question. Said comparative statement was made up from the tariff of rates actually in effect for several years past; the Texas rates being the rates promulgated by the Texas Railroad Commission. All of the rates in said state and territories as shown by said statement are much higher than the proposed rates of the Louisiana Railroad Commission. While, as I have before stated, the Louisiana shippers and manufacturers of the seed have an advantage over the Texas and Indian and Oklahoma Territory shippers and manufacturers, and have correspondingly been benefitted by these advantages.

12. State whether or not the proposed rates of the Louisiana Commission attacked [attached] herein are reasonable, fair and just. If you state that they are not, then why not?

To the twelfth interrogatory the witness answers:

For the reasons as hereinbefore stated in my answers to the foregoing interrogatories, I consider the proposed rates of the Louisiana Railroad Commission on cotton-seed and its products unreasonable, unfair and unjust, for the reason that they do not permit the railway company to earn a reasonable return for the service rendered in handling the commodity. 2. The present existing rates are so arranged that the traffic moves readily under same and under competitive conditions, and there was no necessity to make any change in the rates for the benefit of the persons, firms or corporations handling the commodity. There is a constant demand, both in Louisiana and in other cotton producing states, for the raw material, and a ready market for the manufactured product, and both move readily under the rates in existence, and the rates in existence only afford a small return to the railway company for handling the traffic. 3. If the percentage of reduction as made by the proposed tariff of the commission should be applied to all local tariffs of rates in Louisiana, the effect of same would be to practically require the railway company to haul Louisiana intrastate freight at a loss. At best the revenues derived from the handling of local traffic moved in the State of Louisiana is very small, and when the cost of handling local traffic which is in excess of handling through traffic, is taken into consideration in many instances it barely affords any compensation for the movement, and in the instance of cotton-seed and cotton-seed products under the proposed rates of the commission it would practically have the effect of requiring the railway company to move the commodity at a loss.

76 13. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer?

To the thirteenth interrogatory the witness answers:

I desire to state that the rates now in effect are reasonable, just and fair to the shipper and the railway company, and that the effect

of the proposed reduction will be to deprive the railway company from any profit for the movement of the traffic, and will, in effect, require it to move the traffic at a loss; that the railroad commission had no facts to justify them in making any reduction in the existing rates, but said reduction was an arbitrary reduction not justified by the facts. All or nearly all of this seed moves locally and the cost of doing local business is more than twice as great as the cost of doing through business, as it requires more handling and switching and in addition thereto the oil manufactured from the seed is moved in tank cars, for which the road pays either a rental or mileage and has to move empty one way free. In addition to what I have stated as to the reduction in the rate on seed, the proposed rate of the commission makes equally radical reductions on all of the products; in some instances a reduction as much as forty-seven per cent.

#### Cross-examination.

Cross-Int. 1. If you should produce a tariff of cotton-seed rates in effect in Louisiana at the time the order attacked [attached] was made, please state how long the said tariff of the Texas & Pacific Railway Co. had been in effect.

To the first cross-interrogatory the witness answers:

Local Freight Tariff L. C. No. 95 which is our present tariff in effect showing cotton-seed rates between points on the Texas & Pacific in Louisiana, was in effect at the time the commission's order was attacked, and while effective April 14, 1904, the majority of rates contained therein were carried in previous issues.

77 Cross-Int. 2. If you produce and file your Louisiana cotton-seed tariff, please produce and file all the cotton-seed tariffs of the Texas & Pacific Railway Co. and controlled lines, if any, both interstate and local.

To the second cross-interrogatory the witness answers:

Tariffs L. C. No. 95, L. B. No. 521-H, J. B. Nos. 13-A, 5016-H, 5333-H and 5697-H; also schedule No. Nos. 13-A, 5016-H, 5333-H and 5697-H; also schedule No. 233-T, copies attached to the best of my knowledge and belief contain the only commodity rates we have on cotton-seed car loads. On shipments to and from territories not covered by these commodity tariff regular class rates apply.

Cross-Int. 3. How long have you been in the Traffic Department of that road, and what was the freight rate on cotton-seed in Louisiana and Texas at the time you became connected with the Traffic Department?

To the third cross-interrogatory the witness answers:

I have been connected with the Traffic Department about 21 years, as set forth in my answer to Interrogatory No. 2; have been connected with the rate making business of the Traffic Department about 19 years, but it is impossible for me to say what the rate on cotton-seed in Louisiana and Texas was 19 years ago, as the records of the Texas & Pacific Railway Company were destroyed in 1890 when the general office of the Texas & Pacific Railway Company at Dallas was burned. I have attached hereto, however, a copy of the



distance tariff on cotton-seed in Louisiana and Texas for as far back as I have been able to get a tariff; which tariff is dated about 17 years ago.

Cross-Int. 4. How does the rate on cotton-seed in Louisiana by the Texas & Pacific Railway Co., now in force by it, compare with the rate fifteen years ago; and if any increases or reductions have been made therein, within the past fifteen years, please file with your answer the Tariffs showing same.

To the fourth cross-interrogatory the witness answers:

In the majority of cases the rates have been reduced. Copy of the distance tariff in effect 15 years ago is attached.

Cross-Int. 5. Has there not been a general tendency among the railroads of the south and of the entire country towards a reduction of freight rates during the past fifteen years? If yes, state when such tendency appeared and when it ended, if you know. And if there has been a decline, state if you know, how it was brought about.

To the fifth cross-interrogatory the witness answers:

There has been a general tendency among the railroads toward a reduction in freight rates during the last 15 years, which ended about three years ago. The decline in rates was brought about by increased competition and the ability upon the part of some lines to decrease their operating expenses. There has also been a decline in rates forced upon railroads by unjust reductions made by state railroad commissions. The cost of operating railroad properties and especially the cost of labor and material into railroad construction, operation and maintenance has very largely increased within the last three years and is rapidly increasing at this time. Also the cost of track labor and train service labor has materially increased within the last three years.

Cross-Int. 6. What was the average rate per ton per mile on all freight transported by the Texas & Pacific Railway for the year ending June 30, 1896, and for the year ending June 30th, 1906, and state the average in Louisiana also and separately?

To the sixth cross-interrogatory the witness answers:

1896, entire line, 1 085/1000; for 1906, entire line, 991/1000; Louisiana for 1896, this date not compiled; Louisiana for 1906, 1 015/1000. The high rate per ton per mile in Louisiana is due solely to short hauls, as the shorter the haul the greater the average per ton per mile.

Cross-Int. 7. What was the average freight rate per ton per mile charged by the Texas & Pacific Ry. Co. on cotton-seed in 1896, and what in 1904-1905?

To the seventh cross-interrogatory the witness answers:

Cotton-seed and its products for the year 1896, 1 17/100 cents per ton per mile; 1904, 1 15/100 cents per ton per mile; 1905, 86/100 of a cent per ton per mile.

Cross-Int. 8. Please file the local distance tariffs of the Texas & Pacific Ry. Co. on all articles taking commodity rates in effect in the year 1896, and in the year 1905, both in Louisiana and Texas.

To the eighth cross-interrogatory the witness answers:

It would be practically impossible for me to supply from my records tariffs for the year 1896, but these tariffs are all on file, so far as the Texas local business is concerned with the Railroad Commission of Texas, and on interstate traffic, with the Interstate Commerce Commission at Washington. The tariffs also for the year 1905, both on local business moving in Texas and on local business moving in Louisiana, are on file, respectively, with the Railroad Commission of Texas and Louisiana, and on interstate business are on file with the Interstate Commerce Commission. It would take some time and considerable expense to make up a list of all of these tariffs and attach them hereto, and they are as accessible to the Railroad Commission of Louisiana as they are to me.

Cross-Int. 9. If you can do so, please file with your deposition, copies of the Annual Reports of the Texas & Pacific Ry. Co. made to its stockholders or to the Interstate Commerce Commission, and covering the years ending June 30th, 1897, 1898, 1900, 1902, 1903 and 1905. If you cannot do [so] state who can.

To the ninth cross-interrogatory the witness answers:

I have no copies of the Annual Reports of the Texas & Pacific Railway Company to its stockholders. The reports made by the company to the Interstate Commerce Commission covering the years ending June 30, 1897, 1898, 1900, 1902, 1903 and 1905 are on file with the Interstate Commerce Commission and can be obtained from them.

Cross-Int. 10. Is not the tariff last put in effect by the Texas & Pacific on cotton-seed in Louisiana out of the recognized proportion elsewhere between long and short hauls? And is it not true that commodity rates per ton per mile are usually in inverse ratio to distance? In other words, is it not generally recognized that a local tariff or tariff to or from non-competitive points on a railway should diminish in the rate per ton per mile as the distance increases?

To the tenth cross-interrogatory the witness answers:

The present tariff in effect on the Texas & Pacific Railway  
80 between points in Louisiana on cotton-seed is in a measure out of proportion as compared between short and long haul rates elsewhere on the line owing to the fact that the rates in Louisiana, as previously stated, are lower than between points on the Texas & Pacific in Texas. It is true that commodity rates per ton per mile are usually and should be in inverse ratio to distance. In other words, it is generally recognized that local tariff rates should diminish per ton per mile as the distance increases.

Cross-Int. 11. Is there not a greater profit to your road under its existing tariff in transporting cotton-seed distances of 150 miles and more than for the same service for distances of 20 to 40 or 50 miles?

To the eleventh cross-interrogatory the witness answers:

If the movement is confined alone to the seed there would be a greater profit in moving the seed a distance of 150 miles than for the same service for a distance of 20, 40 or 50 miles, but if the effect of moving the seed 150 miles was to deprive the Texas & Pacific Railway Company of the outbound haul of the seed product, it would obtain more revenue from handling the seed 40 or 50 miles

and the product of the seed, say 160 miles, than it would from handling the seed itself 200 miles. This same relative condition would exist in handling seed and seed products other distances. So it depends upon conditions as to whether or not it is more profitable to handle the seed 150 miles or to handle it a distance of 40 or 50 miles. If the effect of a tariff is to divert cotton seed from the local mills along the line of the Texas & Pacific Railway Company where the Texas & Pacific Railway Company would get to haul the product of same, and divert the seed to New Orleans where the Texas & Pacific Railway Company would not get to haul the product of same, then unquestionably it would be more profitable to haul the seed a short distance and get the product. Not only would it be more profitable in the matter of returning more revenue on that particular transaction, but it also builds up along the line of the Texas & Pacific Railway Company local industries which will furnish a permanent tonnage. While, if the seed was diverted from these local industries to New Orleans, where it is exported direct, the Texas & Pacific Railway Company would not obtain the haul on the manufactured product, and the local industries engaged in the manufacture of cotton seed products would be destroyed. The effect of which would not only be to deprive the Texas &

81 Pacific Railway Company from handling the product of these industries, but will also have the effect of depriving it of a large tonnage which would move to the localities where these local industries are situated in the way of high-class freight, such as merchandise, food stuffs, lumber and building material. In other words, destroy and take away from the Texas & Pacific Railway Company all of the advantage incident to building up local industries along the line of its road.

Cross-Int. 12. If you shall have answered, upon your examination in chief that you assisted in making the cotton seed tariff referred to in Louisiana and that, among other factors, you took into consideration the cost of the service, please state what you considered the cost of the service to be, having regard to carload lots, and state precisely how you arrived at such cost.

To the twelfth cross-interrogatory the witness answers:

As to the cost of service in handling any one commodity, experience has shown that you do not take into consideration any one factor, but you handle the situation as a whole. Primarily railway companies are entitled to receive a fair and reasonable return for the use of their property and to receive this from local traffic tributary and adjacent to their property. In other words, they expect to receive a larger revenue from handling local traffic than they do from handling traffic coming to them from some other territory and which they would not otherwise receive unless the rate was much lower than is imposed upon local traffic. In figuring upon the cost of service in handling local traffic we take into consideration the value of the property, value of the equipment, and the value of its use in handling the commodity, and the various items of cost that must necessarily be prorated to the cost of handling all commodities, and with these factors a fair estimate can be reached as to the cost of handling any one commodity. Again, we are

entitled to take into consideration in fixing rates the fact that one commodity can stand a higher rate than another although the cost of handling same may not be as great as handling the other. All of these conditions and factors must be considered in arriving at a reasonable rate upon any one commodity. Of course, it is a physical impossibility to formulate a mathematical rule by which you can state that it costs so much in dollars and cents to handle the commodity. In the matter of arriving at a reasonable rate upon cotton

seed and cotton seed products, I considered the factors set  
82 forth in my answers to previous questions. In the matter of elements of cost of handling the commodity, the fact that it is local traffic and has to be handled as such is itself an element of increased cost, as the cost of handling local traffic as compared with through traffic is much greater. In fact, it is estimated to be twice as great. The factor that the commodity moves freely and under competitive conditions under existing rates and that there is a constant demand for the purchase of the commodity is a speaking factor to the effect that the present rates are reasonable.

Cross-Int. 13. Did you consider the average cost of all transportation applicable to the average cost of the transportation of cotton seed? And if yes, why?

To the thirteenth cross-interrogatory the witness answers:

I did not take into consideration the average cost of all transportation applicable to the average cost of the transportation of the cotton seed. If I had done so, it would have been an unfair basis to the defendant. For the reasons before stated many commodities are handled at a rate that is unremunerative for special reasons. One of which is in order to build up a local industry railway companies often put in a very low rate upon the raw material, for the reason that they expect to obtain a fair revenue from the manufactured product, and also they expect to obtain a fair return upon other commodities that would have to be used by the parties employed in carrying on the local industry. It often happens that a very low rate is — in upon coal. The reason for this is that the road would be interested in building up coal mines along its right of way. Another reason being that it would obtain coal for its own use at a lower rate. Another reason is that it would build up towns and communities along its line which would necessitate the shipping in of lumber, breadstuffs and clothing, from all of which it would obtain a fair revenue, which might compensate it for its loss in handling the coal, in addition to giving it an increased revenue from the handling of passengers. And to further illustrate, if there was a cotton factory on the line of the Texas & Pacific Railway Company in Louisiana, the road would be willing to give to it a lower rate on the cotton to be manufactured, the manufactured product to be shipped out over the Texas & Pacific, than it would on cotton shipped to New Orleans for export, for the reason that it builds up a local industry on the line of the road and the company

gets a rate on the high-class manufactured product and all  
83 the other incidentals in the way of increased tonnage and an increased high-class tonnage on account of having built up and established a local [local] industry along the line of its road.



Cross-Int. 14. In estimating the cost of transportation, please state, in detail, what items are taken into consideration. In other words, what items does the Texas & Pacific Railway Co. charge to expense of operation?

To the fourteenth cross-interrogatory the witness answers:

In answer to questions 14, 15, 16 and 17, the witness would state that these are matters that are particularly in the knowledge of the auditing department of the Texas & Pacific Railway Company, who keep the accounts and records, and do not belong to the traffic department of the road, and these questions will be answered by Mr. E. W. Tower, whose deposition is also being taken in this case.

Cross-Int. 15. What were the gross and net earnings from operation of the Texas & Pacific in the year ended June 30, 1890; what in the year ended June 30, 1900, and what in the year ended June 30, 1905? And state how the same have been arrived at?

Cross-Int. 16. What, if any, amounts of money were charged during the years named in the last preceding question, to operating expenses for betterments, renewals or permanent improvements and deducted from gross receipts from operation?

Cross-Int. 17. If separate accounts are kept, showing the gross and net earnings of the Texas & Pacific Railway Co., in Louisiana, for said years, and how the net earnings were arrived at, please file the same.

NOTE.—No answers to the foregoing 15th, 16th and 17th cross-interrogatories.

Cross-Int. 18. Do you know whether or not, in making up the cotton seed tariffs of the Texas & Pacific Ry. Co., there was any purpose in view to protect the interior oil mills, on its lines, in Louisiana, against mills in or near the City of New Orleans, or to place the interior mills on a parity, so-called, with them?

And do you know whether or not the Texas tariffs had the same principle in view as between interior mills and mills on or near the seaboard?

To the eighteenth cross-interrogatory the witness answers:

In making up the cotton seed tariffs of the Texas & Pacific we took into consideration the factors stated in answer to previous questions. One purpose in view was to permit the interior mills on its line in Louisiana to retain their physical advantage which they might have by reason of the fact that they were in the producing territory. One of the prime purposes of the proposed commission tariff is to take away from the interior mills their natural physical advantages on account of their location and to give to the mills in the City of New Orleans privileges and advantages that they are not justly entitled to. In other words, attempting to put a point far distant from the producing territory at an advantage over a mill in the producing territory. The purpose or the proposed rates evidently is not only to deprive the interior mills of their natural advantages and donate same to the mills at New Orleans, but also to do this at the expense of the railway company, not only in the matter of requiring it to haul the commodity at an unreasonable rate but also depriving it of its opportunity to handle

the product. It is clearly evident from reading the tariff that the purpose was to make same in favor of the New Orleans mills at the expense of all the other mills of the State. The purpose of the Texas tariffs has been as much as possible to preserve the natural advantages of each mill and it has never been the intention of the Texas Railroad Commission to require the interior mills to pay a subsidy to the port of Galveston for the purpose of enabling that port to engage in the cotton seed oil business at the expense of the interior mills and at the expense of the railway companies.

Cross-Int. 19. Was not your local distance tariff on cotton seed in Louisiana framed with the policy in view of building up or maintaining interior mills upon the idea that your road would be more benefited by hauling in the seed to the interior mills and hauling out their products than by carrying seed to New Orleans mills where their products would be lost to your company?

To the nineteenth cross-interrogatory the witness answers:

The policy of the Texas & Pacific Railway Company was to permit the interior mills to preserve their advantages and not  
85 arbitrarily dispossess them of same and give them to a mill not entitled to same, and this, too, at the expense of the railway companies. We further believed that when we put in a low rate for the purpose of building up interior mills and local industries that we were legitimately entitled to handle the manufactured product.

Cross-Int. 20. Have you ever made an investigation and informed yourself of the cotton seed tariffs of other railroads in, from or into the States of Arkansas, Mississippi, Tennessee, Alabama, Georgia, South Carolina and Florida? If yes, please state fully how their rates for similar distances compare with the rates fixed by the Railroad Commission of Louisiana by the order complained of.

To the twentieth cross-interrogatory the witness answers:

I have made no comparison of the rates of the states mentioned, but my general information is that in all of these states the rates at least give the carrier the right in every instance to haul the manufactured product. I would further state that if the rates in these states deprive the local mills of their natural advantages and tend to break down and destroy same, as does the proposed Louisiana Commission tariff, in my opinion the tariffs in those states are unreasonable and unjust, both to the interior mills and to the railway companies.

Cross-Int. 21. Do you know the rates charged for the transportation of cotton seed by the Mississippi Valley, the New Orleans and Northeastern and the Illinois Central from points on their respective lines to New Orleans, Louisiana? If yes, what are they?

To the twenty-first interrogatory the witness answers:

From points in Louisiana to New Orleans I suppose these lines operate under some tariff authorized by the commission, and if same is upon the basis of the tariff enjoined herein it is an unreasonable tariff.

Cross-Int. 22. Do you know that the rates fixed by the order

complained of are as low or lower than rates on cotton seed received by the railroads generally in the cotton producing states?

To the twenty-second cross-interrogatory the witness answers:

From the largest cotton producing states and territories the rates complained of are lower than the rate on cotton seed received

86 by the railroads operating generally in those states and territories.

Cross-Int. 23. Do you not know that the highest rates charged by any single railroad in Arkansas, for distances exceeding 150 miles, is ten cents per 100 lbs.?

To the twenty-third cross-interrogatory the witness answers:

I do not know whether this is a fact, nor do I know the conditions under which this rate is effective, if it is in effect, but if the effect of this rate is to take away the railway company's right of hauling the manufactured product, and to take away from the local or interior mills their natural advantage on account of being located near the producing territory, then the rates in that state are unquestionably unreasonable, unfair and unjust, and if such rate is in effect, it is a State Railroad Commission rate.

Cross-Int. 24. Is not the joint rate on cotton seed charged by your connections and your road, from points in Louisiana to New Orleans or Gretna, higher than any joint cotton seed rate within your knowledge anywhere,—and what is the rate?

To the twenty-fourth cross-interrogatory the witness answers:

No; there are many cases where they are not higher.

Cross-Int. 25. If the rate from points south of the Vicksburg & Pacific R. R. and east of Red River to New Orleans by the Texas & Pacific and connections is as high as \$4 per ton, please state how you justify such a charge and state what divisions of the through rate are made between your road and its connections.

To the twenty-fifth cross-interrogatory the witness answers:

The Texas & Pacific Railway Company does not attempt to justify such a charge, but said rate was put in by the Railroad Commission of Louisiana. About the first information the Texas & Pacific Railway Company had of this \$4 rate was when it was advised by the Railroad Commission of Louisiana, through its secretary, that the Railroad Commission had held a partial hearing and had concluded that about the only rate that would be put in from this territory would be the rate of \$4 per ton from points between Clayton and Tallulah. As we did not originate the business we made no fight on  
87 the rate as the commission had practically determined the matter before advising us. Our division of this rate is a mileage prorate with a minimum of 125 miles for the lines north and south of Ferriday.

Cross-Int. 26. Does the shipper load the cotton seed your road carries into its cars and does the consignee unload same?

To the twenty-sixth cross-interrogatory the witness answers:

The shipper loads and the consignee unloads the cotton seed. The railway company performs all switching where the mill or seed houses are located on its line free of charge. The rule of loading and unloading carload freight is practically the same.

Cross-Int. 27. Is any special equipment furnished for the transportation of cotton seed,—or is same carried in any dry boxcar?

To the twenty-seventh cross-interrogatory the witness answers:

No special equipment is furnished for the transportation of cotton seed except that it has to be transported in boxcars and in dry boxcars.

Cross-Int. 28. What is the average load of cotton seed per car and what other commodity can be carried more cheaply?

To the twenty-eighth cross-interrogatory the witness answers:

The average load of cotton seed in Louisiana is about 37,000 pounds per car, which is about 1,000 pounds lighter than the average in Texas. Lumber, brick, coal, salt, ore, bullion, stone, gravel, cement, sand and various other commodities, and many of the commodities named do not have to be transported in boxcars, but can be handled on flatcars.

Cross-Int. 29. What is the average carload of other commodities transported by the Texas & Pacific Ry. Co.?

To the twenty-ninth cross-interrogatory the witness answers:

About 39,500 pounds.

Cross-Int. 30. Is it not a fact that your cotton seed traffic in Louisiana can be and is usually handled by your local freight trains?

To the thirtieth cross-interrogatory the witness answers:

88 Cotton seed traffic in Louisiana is largely handled by local freight trains.

Cross-Int. 31. What is the distance from the nearest point on your line to New Orleans where there is a substantial movement of cotton seed?

To the thirty-first cross-interrogatory the witness answers:

Plaquemine, 85 miles.

Cross-Int. 32. What portion of the Texas & Pacific Ry. Company lines makes the best showing in gross and net earnings for the same proportionate distances? Its lines in Louisiana or elsewhere,—and what are its termini?

To the thirty-second cross-interrogatory the witness answers:

This information is not kept by the traffic department, but from statement furnished me by the accounting department the only subdivision earnings shown on our books are as follows, taking the year ending June 30, 1905:

	Gross earnings.	Per mile. Net earnings.
Entire line .....	\$6926.10	\$2372.87
Texas .....	\$7478.50	\$2274.37
Louisiana .....	\$6466.53	\$2230.19

The termini of the Texas & Pacific road is New Orleans, Texarkana and El Paso.

Cross-Int. 33. What, if any, improvements have been made in the facilities of the Texas & Pacific Ry. Co. for handling traffic of all kinds within the past fifteen years, and during what portion of that period have the greatest improvements been made?



To the thirty-third cross-interrogatory the witness answers:

A very large amount of improvements have been made in the facilities of the Texas & Pacific Railway Company for the handling of traffic, all kinds, within the last 15 years. Its equipment has been enlarged; the size of its rail has been enlarged; its bridges and road-beds strengthened, and various other improvements. These improvements have been made over its entire line, from New Orleans to El Paso. The Texas & Pacific Railway Company is continually improving its road in every branch of same, and would make greater improvements did it earn the revenue to pay for same. It has built in the last 15 years in Louisiana about 300 miles.

Cross-Int. 34. What was the weight and hauling capacity of the average locomotive in use on the Texas & Pacific Railway twelve or even ten years ago, and what is it now?

To the thirty-fourth cross-interrogatory the witness answers:

Twelve years ago the average weight of engines was about 50 tons. The average weight now is about 60 tons. The hauling capacity of engines 12 years ago was about 900 tons, and now about 1900 tons.

Cross-Int. 35. How does the boxcar capacity of that road of the present day compare with its capacity twelve years ago?

To the thirty-fifth cross-interrogatory the witness answers:

The cost of increased equipped engines as compared with the cost of small equipped engine 12 years ago is more than double. The average capacity 12 years ago of boxcars was about 40,000 pounds, and at present about 60,000 pounds. Owing to the cost of material entering into the manufacture of cars, the cost is largely in excess of the cost 12 years ago.

Cross-Int. 36. What, if any improvements have been made in road bed [bed], passing tracks, yard room and train capacity during the past ten or twelve years, and what has been the object of such improvements?

To the thirty-sixth cross-interrogatory the witness answers:

Various improvements have been made in the road bed, passing tracks, yard room and train capacity during the last 12 years, and more would have been made had it earned the revenue to pay for same. The object of these improvements was to give better service to the public and to reduce operating expenses, but owing to the increased cost of labor and material and everything entering into the operation of railroads there has been an increase in operating expenses from year to year for the last five years, while there has been a steady tendency on the part of the State Commissions who control state rates in Texas and in Louisiana to reduce rates.

Cross-Int. 37. Can you state with any degree of certainty, or at all, what it costs to transport a carload of cotton seed a distance of 200 miles, in an ordinary train, over the Texas & Pacific Ry. Co.?

To the thirty-seventh cross-interrogatory the witness answers:

It would not be possible to ascertain to a mathematical certainty what it would cost to transport a carload of cotton seed a distance of

200 miles in an ordinary train, but the cost of handling a carload of cotton seed 200 miles would not be the only factor that would be taken into consideration in rate making. You would have to take into consideration the cost or value of the property used in the transportation of the seed. This includes every element entering into the value of the railway property, including the car in which the seed is handled. All of these factors were set out in my answer to questions heretofore propounded. One other factor that would be taken into consideration would be the fact that the Texas & Pacific Railway Company earns a large part of its revenue from agricultural products and agricultural products that move within a very limited season. Cotton, cotton seed and cotton seed products move within a period of about four months. It takes an enormous amount of equipment to move this character of product within these few months, and the balance of the year the equipment is idle. These are all facts that must be considered in arriving at the value of the service in handling any one commodity, but it can be safely stated that a commodity that moves regularly under competitive conditions, where there is a ready demand for it and where there is a constant increase in the number of factories for its manufacture certainly moves under a reasonable rate, and all of these factors are taken into consideration in making up a rate.

Cross-Int. 38. If the effect of the order made *be* [by] the Louisiana Railroad Commission should largely increase your long distance hauls of cotton seed, would not that fact also increase proportionately your gross and net earnings for that service?

To the thirty-eighth cross-interrogatory the witness answers:

If the effect of the Louisiana Railroad Commission's proposed rate is to increase our long distance haul on cotton seed, that might increase proportionately our gross earnings for the service, but not net earnings, but if the rate is unreasonable and the service rendered is not compensatory, the longer we haul the more we lose. If  
91 the rate was a reasonable and compensatory rate, and did not affect other industries or divert other tonnage more profitable, then the longer the haul the more advantageous it would be to us.

Cross-Int. 39. Do you know the amount per mile at which the Texas & Pacific Railroad is assessed in Louisiana for taxation, or the average, and, if yes, how it was reached? If yes, what is the amount and how was it reached?

To the thirty-ninth cross-interrogatory the witness answers:

I do not know anything about this matter.

Cross-Int. 40. If, in answer to direct interrogatory 8, you shall undertake to show the movement of cotton seed and cotton seed products under the present tariff of rates and the revenue derived therefrom and the reduction that would have been made if the Texas & Pacific had operated under the tariff proposed by the commission, please say whether or not it is assumed, in such last statement, that the traffic would have been substantially the same, and between the same points, if the new commission rate had been in effect?

To the fortieth cross-interrogatory the witness answers:

In the statement attached the actual movement of the cotton seed and the product is shown for the year ending December 31, 1905, and the revenue derived therefrom, and the revenue that would have been derived from same if the proposed tariff of the Louisiana Railroad Commission had been in effect. In my opinion the commission's proposed tariff would be to deprive the Texas & Pacific Railway Company of the long haul on the product of cotton seed and its revenues would be proportionately decreased. In my opinion if the actual tonnage, as set forth in the statement, had been moved under the proposed tariff the loss in our revenue would have been much greater, from the fact that the movement would not have been substantially the same. And in addition to the depreciation in our revenue, in my opinion it would have affected the various local mills situated on our line, depriving them of their just revenues and depriving the Texas & Pacific Railway Company of a large amount of other freight that it would receive from these industries if they had been enabled to obtain the business naturally tributary to them.

Cross-Int. 41. Please state precisely how you arrive at an estimate of the profit earned by the Texas & Pacific, under its present tariff for carrying cotton seed products. If not by applying the average on all traffic handled, how do you get at it?

To the forty-first cross-interrogatory the witness answers:

I have made no estimate as to the profit earned by the Texas & Pacific Railway Company under its present tariff for carrying cotton seed and its products, but in my previous questions I have simply stated the factors taken into consideration in making tariffs.

Cross-Int. 42. If the statements called for only include the movement originating on your own line, please add a statement showing the seed and their products carried by your road to destination which originated on connecting lines, during the same period, and its receipts therefrom.

To the forty-second cross-interrogatory the witness answers:

The statement furnished only includes movements originating on our line. We made no statement as to products coming to us from other lines, as the commission's proposed tariff did not cover this movement.

Cross-Int. 43. If you should say that oil mills have prospered in Texas, Indian Territory and Oklahoma, and that there has been an increase in their number during the past five years,—please state during what years they prospered, how you know they have prospered, and during what years there was an increase and what the increase was.

To the forty-third cross-interrogatory the witness answers:

Taking the last five years as a whole, my information is Oklahoma and Indian Territory and Texas mills have prospered. Of course, when there is a shortage in seed, oil mills would not do as well as when there was an abundance of seed, as when they can run to their full capacity during the entire season their operating expenses would be reduced in proportion. At the same time, when there is a shortage in seed the revenues of the railway companies are also decreased, as there is a shortage in tonnage, while the railway

companies have practically the same fixed charges and there may be idle equipment. My information is also to the effect that  
93 there has been an increase in the number of mills in the last five years in Texas and in Louisiana.

Cross-Int. 44. If you had only in view the profit of transporting cotton seed, would it not pay your road better to put in the commission rate and thereby increase the length of your haul?

To the forty-fourth cross-interrogatory the witness answers:

This question has been fully answered in my answers to previous questions. We could not have in view only the profit from the transportation of cotton seed. All other conditions and factors surrounding this traffic and its movement must necessarily be considered. It would not pay the road better to put in the proposed commission rate and thereby increase the length of our haul, for the reason, as shown in previous questions, it would not increase our revenue, but would materially decrease same.

Cross-Int. 45. If you should say, in answer to direct interrogatory No. 12, that the proposed rates of the Louisiana commission are not reasonable, fair or just, please state what you consider a fair return on the investment, or the value of the property, of the Texas & Pacific Railway Company in Louisiana, and upon all its lines, and how such return would be affected by the charge proposed.

To the forty-fifth cross-interrogatory the witness answers:

I have stated that in my opinion the proposed rates of the Louisiana Railroad Commission are not reasonable, fair or just. As to what would be a fair return on the investment or the value of the Texas & Pacific Railway Company's property, in my opinion it should earn a sufficient amount over and above its operating expenses and fixed interest charges, including taxes, to pay a dividend of at least six per cent upon its capital stock, and in addition thereto provide a sinking fund to meet its mortgage indebtedness when it matures, and in addition thereto provide a permanent fund for the purpose of making improvements and betterments and not be dependent upon its current earnings from year to year to make such improvements. It is impossible under the present rule of the State Commissions for a railroad management to figure to a certainty what its revenue will be from handling local traffic, as its profits arising from an increased tonnage on account of a prosperous year may be taken from it by reductions in rates made by

94 State Railroad Commissions. The question as to the effect of the reduction in the present rates upon the revenue of the road, and as affecting its right to earn a reasonable return, is measured by the dollars and cents that would be taken from the road on account of the reduced rates. If the same radical change was made by the Louisiana Commission in all of the rates on local traffic in Louisiana as is proposed to be made in their present tariff, it would practically require the Texas & Pacific Railway Company to move such traffic at a loss. The only source from which the Texas & Pacific Railway Company can derive revenue to pay its fixed interest charges, including taxes, and its operating expenses, and make im-



provements and betterments, is out of current earnings. It has no other way to obtain funds for this purpose, and has no accumulated funds for this purpose.

Cross-Int. 46. And, if you do not know what it costs to handle a carload of cotton seed, what other criterion of a fair rate have you than the average rate charged for the same service elsewhere?

To the forty-sixth cross-interrogatory the witness answers:

This question has been fully answered by my answers to previous interrogatories.

Cross-Int. 47. What has been the rate on cotton seed carried by the Texas & Pacific Railroad to Cinclare, Louisiana, during the past two years, and what have been the rates during that time on the products of the oil mill and refinery located at that place? Have the same during all that period been above or below the rates named in your tariff for corresponding distances, or above, below or equal to the rates proposed by the order of the Railroad Commission of Louisiana complained of in this suit?

To the forty-seventh cross-interrogatory the witness answers:

Owing to the location of the Cinclare mill on the Mississippi and its nearness to New Orleans and Baton Rouge, the railroad company was forced to put in a lower rate than otherwise would have been justified in order to obtain the business at all. In other words, it was a competitive condition that the road had to meet or else lose the business. The Cinclare rate as a whole if adopted as a general basis of rates in Louisiana would be unreasonable and unjust and would not be compensatory for handling the business. One  
95 of the factors in making rates is to make them upon a basis of what the traffic will bear. By the term "What the traffic will bear" I do not mean an oppressive rate, but a rate that will get the traffic under competitive conditions. During the past two years and up to the present time the rates on cotton seed and cotton seed products to and from Cinclare have been and are lower than the regular mileage rates applicable elsewhere, in a great many instances, the reasons for which are fully explained above.

(Signed)

H. L. REDFIELD.

Sworn to and subscribed before me, this the 23rd day of October, A. D. 1906.

(Signed)

[SEAL.]

W. H. COPE,

Notary Public, Dallas Co., Texas.

*Deposition of E. W. Tower, a Witness for Complainant, Residing in the City of Dallas, Dallas County, Texas, Taken Under Agreement of Counsel, Before W. H. Cope, Notary Public, Dallas County, Texas, on the 23rd Day of October, A. D. 1906, and Filed March 7th, 1908.*

U. S. Circuit Court, Eastern Dist. of La., Baton Rouge Division.  
In Equity.

No. 56.

THE TEXAS & PACIFIC RAILWAY COMPANY  
vs.  
RAILROAD COMMISSION OF LOUISIANA et al.

Messrs. Howe, Spencer & Cocke and T. J. Freeman, for Complainant.

Hon. Walter Guion, Attorney General of Louisiana, for Defendants.

Direct examination:

Interrogatories propounded to E. W. TOWER:

1. What is your name, age and residence, and what is your occupation at this time, and how long have you held your present position?

96 To the first interrogatory the witness answers:

My name is E. W. Tower; age 52 years; residence Dallas, Texas; am assistant auditor of the Texas & Pacific Railway Company, and have been so engaged since July 1, 1888.

2. If you have answered that you are the assistant auditor of The Texas & Pacific Railway Company, then state whether or not the books and records of The Texas & Pacific Railway Company are under your charge?

To the second interrogatory the witness answers:

The books and records of the Texas & Pacific Railway Company are under my charge.

3. State whether or not you have made or caused to be made a statement showing the percentage of expense and earnings of all business on the Texas & Pacific road for the five years ending December 31, 1905? If so, please state what said statement shows and attach said statement as a part of your answer to this question?

To the third interrogatory the witness answers:

I have prepared a statement showing percentage of expense and earnings of all business of the Texas & Pacific Railway Company for the five years ending December 31, 1905, which shows for the year 1901, expenses equal to 68.26 per cent of earnings; for the year 1902, 68.99 per cent; for the year 1903, 68.51 per cent; for the year 1904, 65.24 per cent, and for the year 1905, 67.63 per cent;

average for the five years, 67.70 per cent. Statement is attached and marked Exhibit "A."

4. State the percentage of extra cost, if any, of handling local business over and above the cost of handling through business? If you have stated that the cost of handling local business is greater than handling through or business other than local, then state about how much greater is the cost of handling local business?

To the fourth interrogatory the witness answers:

There is no mathematical rule for arriving at the extra cost of handling local business over and above the cost of handling through business, but after charging all items that can be directly charged to the handling of local business as compared with the items that can be charged to the cost of handling through business, and making a fair division of the items of expense that cannot be directly charged to either through or local business, it is estimated that the cost of handling local business as compared with the cost of handling through business is almost twice as great. This grows out of the fact that a greater number of train men are employed on local trains; more stops have to be made; more switching has to be done, and more work has to be done by local station agents, and also the fact that the train does not run at night, but the work is confined practically to day work. After taking all of these factors into consideration it is estimated that it costs almost twice as much to handle local business as it does to handle through business.

5. If you have made an estimate of the reduction in the rates on cotton seed and cotton seed products that would follow the putting into effect of the Louisiana Commission rates which is enjoined in this case as compared with the rate now in existence, then state what the percentage of reduction is?

To the fifth interrogatory the witness answers:

If the rates proposed by the Louisiana Railroad Commission had applied to the actual movement of the traffic for the year ending December 31, 1905, there would have been a reduction of 20.76 per cent in the revenue. The reduction between the rates now in effect by the Texas & Pacific Railway Company and the proposed rates of the Louisiana Railroad Commission run as high as 47 per cent, and in nearly every instance exceed 30 per cent, as appears from statement showing a comparison of the rates attached to Mr. Redfield's deposition.

6. What would be the effect if this percentage of reduction had been applied to the entire business of The Texas & Pacific Railway Company for the five years mentioned in your statement attached? Is it or is it not a fact that if the same percentage of reduction upon other local commodities had been made by the Louisiana Commission that The Texas & Pacific Railway Company would have performed the service of handling local traffic at a loss?

To the sixth interrogatory the witness answers:

Applying this percentage of reduction in revenue on the entire business of the Texas & Pacific Railway Company for the five years ending December 31, 1905, as shown in statement, it would mean a loss to the company of \$12,386,417.75, and if this reduction had been applied to local traffic in Louisiana

during the same period of time, the same would have been handled at a loss. To illustrate: Suppose the Texas & Pacific Railway Company under the rates now in effect had earned on the business moving under same for the year ending December 31, 1905, -1,000,000, of which amount \$677,000 was for operating expenses, and \$323,000 would be left for dividends or to pay fixed charges and taxes. If the proposed rates of the Railroad Commission of Louisiana had been in effect during the same period of time and applied to the same business, a reduction would have been made in the revenue of \$207,600, leaving a balance of \$115,400, and estimating that the cost of local traffic over through traffic was only 20 per cent, this would leave a deficit of \$20,000. And to further illustrate: As stated above, the average operating expenses to earnings for the five years ending December 31, 1905, was 67.70 per cent. Add to this the extra cost of local business estimated at 20 per cent, which is not more than one-fifth of the actual cost, and the result is that under the rates during the period stated, the cost of the Texas & Pacific Railway Company to earn \$100 would have been \$81.24. If the proposed rates of the Louisiana Railroad Commission had been in effect during that time a reduction of 20.76 per cent would have been made, leaving the revenue received by the company only \$79.24, as against \$100 for the same service. This shows that during the period named the operating expenses would have exceeded the earnings \$2 in every \$100 of the amount actually received by it.

7. Do you know or can you set forth any other matter or thing that may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this examination or the matters in question in this cause? If yes, set forth the same fully and at large in your answer?

To the seventh interrogatory the witness answers:

I have no further statements to make as to the original interrogatories.

#### Cross-examination:

Cross-Int. 1. If Mr. Redfield shall not have produced and made part of his deposition the annual reports of the Texas & Pacific Railway Company called for of him, please examine  
99 Cross-Interrogatory No. 9 to him and file, as part of your deposition, the annual reports called for therein.

To the first cross-interrogatory the witness answers:

The Texas & Pacific Railway Company made no reports to its stockholders covering the period stated in your question. We have no blanks on which to make copies of our reports to the Interstate Commerce Commission, but the reports are on file with said commission, and can be obtained by you on request.

Cross-Int. 2. What is the total mileage of the Texas & Pacific Railway Company's lines,—main and branch lines?

To the second cross-interrogatory the witness answers:

1,548.05 miles.

Cross-Int. 3. Are separate accounts kept of the business of the Texas & Pacific Railway Company which enable you to determine



its gross and net earnings in the State of Louisiana? If yes, what were the same for the year ending December 31, 1900, and what for the year ending June 30, 1905? And what were the gross and net earnings of all its lines for the same period? And please state the amount earned per mile of road in each case, and state what the mileage is in the State of Louisiana.

To the third cross-interrogatory the witness answers:

Separate accounts are kept of the business of the Texas & Pacific Railway Company, which enable me to determine its gross and net earnings in the State of Louisiana. For the year ending December 31, 1900, gross earnings were \$3,232,717.26; net earnings were \$1,361,724.54. For the year ending June 30, 1905, gross earnings were \$4,806,564.60, and net earnings were \$2,044,641.72. For the entire road, year ending December 31, 1900, gross earnings were \$9,751,121.21, and net earnings were \$3,169,489.61. For the year ending June 30, 1905, gross earnings were \$12,300,580.97; net earnings, \$4,370,064.74. Earnings per mile of road in Louisiana for the year ending December 31, 1900, were \$8,225.74; net earnings same period, \$3,464.95; for the year ending June 30, 1905, \$7,256.51; net earnings same period, \$3,086.81. Earnings per mile of road entire line for year ending December 31, 1900, were \$6,385.80; for year ending June 30, 1905, \$6,737.64. Mileage in State of Louisiana, 684.78 miles.

Cross-Int. 4. Did you make up or assist in making up the returns for assessment of the Texas & Pacific Railway Company to the Board of Assessors of the State of Louisiana for the years 1904 and 1905; and do you know what the same was in dollars and cents, in the aggregate, and per mile? If yes, what? And if you assisted in making up such returns, please state how the valuation was arrived at and whether it was correct.

To the fourth cross-interrogatory the witness answers:

I do not make up or assist in making up returns for assessments of the Texas & Pacific Railway Company, Board of Assessors of the State of Louisiana, for any period, and do not know what same was.

Cross-Int. 5. Please examine the balance sheets of the Texas and Pacific Ry. Co. for the years ended June 30, 1905, and June 30, 1906, and state at what valuation its railroad property is put down in each of said years.

To the fifth cross-interrogatory the witness answers:

For the year ending June 30, 1905, the cost of road and equipment was \$87,989,745.65; for year ending June 30, 1906, \$88,873,805.34.

Cross-Int. 6. Please state what the gross and net earnings of that road were in said years, if you can do so, state separately what they were in the State of Louisiana.

To the sixth cross-interrogatory the witness answers:

Gross earnings for year ending June 30, 1905, were \$12,300,580.97; net earnings same period, \$4,370,064.74; for year ending June 30, 1906, gross earnings \$12,657,584.06; net earnings, \$4,336,464.03. In Louisiana for year ending June 30, 1905, gross \$4,806,-

564.60; net, \$2,044,641.72. For year ending June 30, 1906, gross \$4,295,395.50; net, \$1,481,408.46.

Cross-Int. 7. Please state whether, in computing the amount of the net earnings of the Texas & Pacific Ry. Co., for the five years ending December 31, 1905, and the percentage of expense, any expenditures for betterments and permanent improvements, have been charged against expense of operation, and, if yes, state  
101 the amount of such expenditures for each of said years and the character of the permanent improvements and betterments.

To the seventh cross-interrogatory the witness answers:

In computing net earnings for five years ending December 31, 1905, expenditures for betterments and permanent improvements charged against expense of operation amounted to \$538,895.50, account new depots and buildings, ballast, ditching and embanking, changing alignment and grade, etc., all in year 1901.

Cross-Int. 8. If, in answer to direct interrogatory No. 3, you should furnish a statement purporting to show the percentage of expense to receipts from operation, please state, if you can, what particular items or articles of traffic were most expensive in handling and which were the least expensive.

To the eighth cross-interrogatory the witness answers:

Cattle, machinery and manufactures are among the most expensive, and coal, coke, ore bullion and lumber are among the least expensive.

Cross-Int. 9. Please state what amount of money has been paid out by your company during the past five years for damage to or loss of property transported by it, and separately, what it has paid out during that period for damages to or loss of cotton seed in transit.

To the ninth cross-interrogatory the witness answers:

The company has paid for damages for loss of property transported by it during the last five years the sum of \$528,109.33. We keep no separate account for amount paid out for loss or damage to cotton seed in transit or any one article.

Cross-Int. 10. How do you estimate the cost of handling any particular traffic?

To the tenth cross-interrogatory the witness answers:

There is no mathematical rule for estimating the cost of handling any particular traffic, but, as stated in my answer to previous questions, all elements — can be charged to the movement of any one traffic is so charged, and those items that cannot be charged to the movement of any one traffic are estimated upon a fair basis. By this means we arrive at a fair result as to the actual cost of handling the traffic.

102 Cross-Int. 11. Are not cotton seed and their products transported almost entirely in bulk and do not the shippers load and the consignees unload the same as a rule?

To the eleventh cross-interrogatory the witness answers:

Yes.

Cross-Int. 12. What portion of your line is most profitable,—in proportion to distance,—that in Louisiana or that in Texas?

To the twelfth cross-interrogatory the witness answers:

The Eastern Division of our line in Texas and the Louisiana Division of our line are about upon a parity.

Cross-Int. 13. Are there not considerable stretches of your company's line in Texas through sections of the State furnishing but little local business? And is such the case anywhere in Louisiana?

To the thirteenth cross-interrogatory the witness answers:

Until 1901 there was quite a stretch of country in West Texas which furnished comparatively little local business as compared with the Louisiana Division of the Eastern Division of the Texas & Pacific, but since 1901 the western country has materially improved and has to a large extent become an agricultural section. In 1896 the gross earnings per mile on the Rio Grande Division of the Texas & Pacific, which traverses the country known as West Texas, was \$2,599.74 per mile, while in 1905 it was \$5590.84 per mile. In 1896 the revenue from our Louisiana Division was \$7,398.44; in 1905 it was \$6,119.30.

Cross-Int. 14. What was the actual cost per mile for the construction of the main line and branches of the Texas & Pacific Railway Company as a whole, and what in the State of Louisiana, and how do you ascertain the same?

To the fourteenth cross-interrogatory the witness answers:

The total cost per mile for construction of the Texas & Pacific Railway Company up to June 30, 1906, was \$50,610.07. This amount was arrived at by taking the total cost of construction, including equipment, and dividing it by the number of miles. Our records are not kept in such shape as to show the cost in Louisiana separate from that of entire line.

103 Cross-Int. 15. Do all the items in your books charged against construction, represent actual money expended? If not, what portion does?

To the fifteenth cross-interrogatory the witness answers:

The amount charged against construction represents money expended or its equivalent in property or securities of some kind, but does not include betterments and new equipment charged since June 1, 1888, to improvement account or to new equipment account.

Cross-Int. 16. What is the amount of capital stock and what the amount of mortgage bonds of the Texas & Pacific Railway Company, and if you can do so, please state what amount of money was received by the company for its stock issue and for its bond issue and what disposition was made of the same?

To the sixteenth cross-interrogatory the witness answers:

The amount of capital stock outstanding of the Texas & Pacific Railway Company is \$38,763,810, and the amount of outstanding mortgage bonds of the Texas & Pacific is \$54,621,531.32. These bonds, with the exception of about \$6,000, bear interest at the rate of five per cent, payable semi-annually. The outstanding capital stock and bonds represent the amount of money received for same. In fact the stock was assessed an additional amount of 10 per cent.

Cross-Int. 17. What is the general topography of the country in

Louisiana and in Texas through which the Texas & Pacific Railway is operated? Is it not generally level?

To the seventeenth cross-interrogatory the witness answers:

With the exception of some portions of the Rio Grande Division of the Texas & Pacific the country is generally level.

Cross-Int. 18. Is it not advantageous to a railroad company to be able to handle a particular traffic with its local freight trains? Are the same not run daily without special regard to the business offering? And is not cotton seed in Louisiana generally carried by local freight trains, thus saving expense to the through freight trains from frequent stops?

To the eighteenth cross-interrogatory the witness answers:

104 It is not advantageous to handle traffic on local freight trains. The cost of operation is greater than when handled on through trains. I am not familiar with the actual movement of cotton seed in Louisiana, and do not know on what class of trains it is moved, but should judge that it is handled by local trains.

Cross-Int. 19. If you shall say that cotton seed is usually handled by local freight trains, how can you estimate an extra expense from handling that particular traffic?

To the nineteenth cross-interrogatory the witness answers:

There would be no extra expense incident to handling cotton seed on local trains except the extra expense incident to its being handled on local trains. At points on the line where the cotton seed had to be sent out to local industries a free switching would have to be performed. The increased expense grows out of the fact that it is handled as local traffic on local trains.

Cross-Int. 20. From what points and to what points in Louisiana are cotton seed products transported by your road, and what is the expense incident to handling the same?

To the twentieth cross-interrogatory the witness answers:

Cotton seed products in Louisiana are transported by the Texas & Pacific Railway Company from and to Shreveport, Natchitoches, Lake Boyce, Alexandria, Bunkie, Long Bridge, Cinclare, New Roads, Batchelor, Torras, Mansfield Jct., LaCompte, and other stations. I cannot give you the actual expense incident to handling this particular commodity.

Cross-Int. 21. Are you not aware that the circumstance that a particular traffic can be handled by local freight trains is usually considered a reason for its taking a lower freight rate than if handled otherwise?

To the twenty-first cross-interrogatory the witness answers:

I am not.

Cross-Int. 22. How do the rates on all traffic of your road for 1905 compare with those for the years 1896 and 1900? And how is it in respect to cotton seed and cotton seed products for the same periods?

To the twenty-second cross-interrogatory the witness answers:

The rates on all traffic for 1905 were considerably lower than for the years 1896 and 1900.

105 Cross-Int. 23. What is the average carload of cotton seed carried by your road in Louisiana; what is the average car-



load of cotton seed oil meal and cake, and what is the average freight charge on each under your tariff? Take the years 1904 and 1905 to answer.

To the twenty-third cross-interrogatory the witness answers:

The average carload of cotton seed carried in Louisiana is 37190 pounds. The average carload of cotton seed oil, meal and cake is 48,900. The average freight charge per car on cotton seed, \$38.08. The average freight charge per car on cotton seed oil, meal and cake, \$57.99.

Cross-Int. 24. If you can do so, please state the cost of these particular services.

To the twenty-fourth cross-interrogatory the witness answers:

This question has been answered in my answers heretofore made to original and cross-interrogatories.

Cross-Int. 25. If the rates proposed by the commission, on cotton seed, are put into effect, and it is found that there is a greatly increased movement for the greater distance, say for an average of 200 miles, would not your profits from the traffic be proportionately increased? If not, why not?

To the twenty-fifth cross-interrogatory the witness answers:

If the increased movement for the greater distance was made at the expense of the revenue of the railway companies and had the effect of depriving them of the haul of the manufactured product, and the effect of breaking down and destroying the already established local industries along their lines, it would not be more profitable to haul a greater distance, say 200 miles, and our profits on the traffic would not be proportionately increased. If we could get the long haul at a fair and reasonable rate, and not at the expense of a depreciation of our revenues from other sources, it would be more profitable than a short haul at the same rate.

Cross-Int. 26. If your road can carry, by its local freight trains, cotton seed, with a load of 30,000 lbs. per car, at 15 cents per 100 lbs., or \$45 per car, a distance of 210 to 225 miles, why would not that be a reasonable remuneration for the service?

106 To the twenty-sixth cross-interrogatory the witness answers:

If the cost of service was alone considered, \$45 per car for the distance mentioned might be reasonable remuneration for the service in transporting same, but railway companies do not confine their rates to the actual cost of service, but also include an amount that would give them a reasonable return on the use and value of their property.

Cross-Int. 27. State the gross receipts of the Texas & Pacific Railway Company for the transportation of cotton seed oil in Louisiana, for the year ending December 31, 1905.

To the twenty-seventh cross-interrogatory the witness answers:

Gross receipts of the Texas & Pacific Railway Company for the transportation of cotton seed oil in Louisiana for the year ending December 31, 1905, were \$24,311.91.

NOTE: Cross-interrogatories Nos. 14, 15, 16 and 17 propounded to H. L. Redfield are answered by Mr. Tower.

(Signed)

E. W. TOWER.

Sworn to and subscribed before me this the 23rd day of October,  
A. D. 1906.

(Signed)  
[SEAL.]

W. H. COPE,  
Notary Public, Dallas Co., Texas.

"EXHIBIT 'A.'"

The Texas and Pacific Railway Company, Accounting Department.

*Statement Showing Percentage of Expense and Earnings of all Business of the Texas & Pacific Railway Company for the Five Years Ending December 31, 1905.*

Year.	Earnings.	Expenses.	Per cent earnings to expenses.
1901.....	\$11,769,941.88	\$8,034,450.19	68.26
1902.....	11,236,601.12	7,752,289.90	68.99
1903.....	12,094,743.89	8,286,105.66	68.51
1904.....	12,433,147.53	8,111,692.07	65.24
1905.....	12,130,391.01	8,210,165.82	67.68
Total.....	59,664,825.43	40,394,703.64	Av. 67.70

Exhibit to Tower's deposition.

107 *Deposition of C. Ludolph, a Witness for Complainant, Residing in the City of Dallas, Dallas County, Texas, Taken Under Agreement of Counsel, Before W. H. Cope, Notary Public, Dallas County, Texas, on the 23rd Day of October, A. D. 1906, and Filed March 7th, 1908.*

U. S. Circuit Court, Eastern Dist. of La., Baton Rouge Division. In Equity.

No. 56.

THE TEXAS & PACIFIC RAILWAY COMPANY

vs.

RAILROAD COMMISSION OF LOUISIANA et al.

Messrs. Howe, Spencer & Cocke and T. J. Freeman, for Complainant.

Hon. Walter Guion, Attorney General of Louisiana, for Defendants.

Direct examination:

Interrogatories propounded to C. LUDOLPH:

1. State your name, age, residence and place of occupation?

To the first interrogatory the witness answers:

C. Ludolph; age 45 years; residence and place of business Dallas, Texas.

2. If you have stated that you are a car accountant of The Texas & Pacific Railway Company, then state how long you have held such position?

To the second interrogatory the witness answers:

Fourteen years.

3. Are your records as such car accountant such as are in use by all standard railway companies in the United States, and are they properly kept?

108 To the third interrogatory the witness answers:

The system in use in this office is practically the same as is used by all standard railway companies in the United States, and they are properly kept.

4. Are your records kept in such a manner as to show the amount paid private car lines and railway companies for loaded and empty mileage on tank cars? If you state that your records are kept so as to show the amount paid private car lines and railway companies for use of cars in cotton seed product business in Louisiana for loaded and empty mileage and per diem of tank cars, then please attach a statement as a part of your answer to this question made up from your books showing the amount paid out by the Texas & Pacific Railway Company for the year ending December 31, 1905, for the use of cars in cotton seed product business in Louisiana including amount paid out for loaded and empty mileage and per diem of tank cars, for the year ending December 31, 1905.

To the fourth interrogatory the witness answers:

Statement showing the amount paid out during the year 1905 is attached hereto and marked Exhibit "A."

#### Cross-examination:

Cross-Int. 1. If you should undertake to furnish a statement of amounts paid to private car lines and railway companies for loaded and empty mileage on tank cars in Louisiana, for the year ending December 31, 1905, please state the points of origin and destination of such cars as were not used by the Texas & Pacific Railway Company wholly in Louisiana.

To the first cross-interrogatory the witness answers:

The statement referred to shows the amount paid for mileage on movements of cars in Louisiana and not in other states.

Cross-Int. 2. Do your books show what amounts were paid to the Texas & Pacific Ry. Co. for or during the same period by other railway companies for the use of its cars on their lines? If yes, state the amount.

To the second cross-interrogatory the witness answers:

109 They do. Per diem and mileage paid by other lines to the Texas & Pacific Railway Company during the year 1905, for the use of all freight cars was \$271,025.98.

Cross-Int. 3. What equipment in the way of tank cars suitable for transporting cotton seed oil, is owned by the Texas & Pacific Railway Co., and what use was made of the same during the said year?

To the third cross-interrogatory the witness answers:

The Texas & Pacific Railway Company owns ten tanks cars, which were used during the year for transporting cotton seed products and other commodities.

Cross-Int. 4. Do you know the average cost of such tank cars as are used in Louisiana in the transportation of cotton seed oil? If yes, what is it?

To the fourth cross-interrogatory the witness answers:

About \$800—

Cross-int. 5. What allowance is made to the private car lines for the use of their tank cars and how is it paid?

To the fifth cross-interrogatory the witness answers:

Three-fourths of one cent per mile is allowed private car lines for the use of their tank cars, both empty and loaded, which amount is paid by draft on assistant treasurer of this company.

Cross-Int. 6. State how many tank cars belonging to other lines were used by the Texas & Pacific Ry. Co. in the year 1905, in transporting cotton seed oil wholly within the State of Louisiana.

To the sixth cross-interrogatory the witness answers:

I do not know. Such data was not kept during that year and we have now no ready means of ascertaining the exact number.

(Signed)

C. LUDOLPH.

Sworn to and subscribed before me this the 23rd day of October, A. D. 1900.

(Signed)

W. H. COPE,

[SEAL.]

Notary Public, Dallas Co., Texas.

110

C. LUDOLPH—EXHIBIT "A."

The Texas & Pacific Railway Company. Car Accountant's Office.

C. Ludolph, Car Accountant.

DALLAS, TEXAS, *September 1st, 1906.*

Statement showing amount paid the following private car lines, operating tank cars used for hauling cotton seed products, for loaded and empty mileage on tank cars, in State of Louisiana, both in State and interstate traffic, from January 1st, 1905, to December 31st, 1905:

Line.	Amount.
Armour Tank Line.....	\$ 58.55
American Cotton Oil Co.....	1,852.42
Armstrong Packing Co.....	35.06
Columbia Refining and Manufacturing Co.....	194.65
German-American Tank Line.....	368.91
Globe Refining Co.....	28.63
Grayson Oil & Cotton Co.....	15.39
Kentucky Refining Co.....	248.85
Lawler & Chaery.....	52.80
Louisville Cotton Oil Co.....	33.58



Merchants & Planters Oil Co.....	76.52
Morris & Co.....	22.28
Paris Oil & Cotton Co.....	2.94
Proctor & Gamble Co.....	173.34
Robinson, C. W.....	6.03
Swift Tank Line.....	43.03
Southwestern Oil Co.....	.31
Seaboard Refining Co.....	792.09
Southern Cotton Oil Co.....	1,484.46
Sayers Tank Line.....	3.24
Victor Cotton Oil Co.....	358.09
Young, E. H.....	5.22
Total.....	\$5,856.39

[Indorsed:] Statement showing amount of per diem paid to railroad companies for use of their tank cars, used in transporting various commodities, in the State of Louisiana, both in State and interstate business, for the year 1905. \$1,265.20.

111 *Deposition of L. S. Thorne, Witness for Complainant, Taken under Agreement of Counsel, and Filed February 18, 1907.*

Circuit Court of the United States, Eastern District of Louisiana.

No. 56, Baton Rouge Div.

The TEXAS & PACIFIC RAILWAY COMPANY

vs.

RAILROAD COMMISSION OF LOUISIANA et al.

Messrs. Howe, Spencer & Cocke, T. J. Freeman, Solr. for Complt.

Direct examination:

Interrogatory No. 1. State what business you hold with the Texas & Pacific Railroad Company, and how long you have held same, and what are the duties of your position?

In answer to the first direct interrogatory the witness answers:

I am vice-president and general manager of The Texas & Pacific Railway Company, and have held such position for above five years; since 1892 I was third vice-president and general manager of The Texas & Pacific Ry. Co. The duties of my position are the general control and management of The Texas & Pacific Railway Company's property, and actively supervising the operation of said railway property.

Interrogatory No. 2. If you have stated that you are the vice president and general manager of the Texas & Pacific Railroad Company, and that your duties as such general manager and vice president are to actively operate said road, and that you have charge of the active operation of same, as its managing head, then state whether

or not in the past and now said Texas & Pacific Railroad property has been extravagantly or economically managed? State whether or not there has been any extravagance or needless expenditure of money in its operation or management. State whether or not there has been any waste in the management of its property. State whether or not there has been paid out large sums in the way of enormous salaries. Also state whether or not said Texas & Pacific Railroad Company in its construction was wisely or unwisely built in the localities where there is not sufficient business to sustain it?

In answer to the second direct interrogatory the witness answers:

The Texas & Pacific Railway Company has not been extravagantly operated or managed during any part of my administration. On the contrary, it has been economically managed in every department. A comparative statement of its operating expenses to earnings, as compared to other lines running through the same territory, discloses the fact that it has been operated probably more economically than any other line of like mileage. There has not been any extravagance on [or] needless expenditure of money in its operation or management, nor any waste in the management of its property, nor has there been paid out large sums in the way of enormous salaries. On the contrary, the salaries paid to the employes of The Texas & Pacific Ry. Co. are reasonable and proper, and probably much less than are paid out to employes of the same class and kind by other railway companies in the territory through which it operates. I am of the opinion, based upon a connection of about thirty years with The Texas & Pacific Ry. Co., that in its construction it was wisely built, and that its local territory will furnish sufficient business upon reasonable rates to make the property self-sustaining and ultimately a profitable investment.

Interrogatory No. 3. From what source does the Texas & Pacific Railroad Company derive its revenue, for the purpose of improving and bettering its property and to meet all of its operating expenses, including its fixed charges and taxes?

To the third direct interrogatory the witness answers:

The Texas & Pacific Ry. Co. has no other source than current revenues for obtaining a fund for improving and bettering its property, and to meet its operating expenses, including fixed charges, and taxes. It has no accumulated funds for this purpose, and is dependent entirely upon its current earnings in order to make this expenditure.

Interrogatory No. 4. Please state whether or not the Texas & Pacific Railroad Company has been able to earn a sufficient revenue from the operation of its property to meet its fixed charges, and to place the necessary betterments upon its property and the necessary improvements, both in the way of maintenance and permanent betterments, and also in the way of additional equipment and rolling stock generally?

To the 4th direct interrogatory the witness answers:

The Texas & Pacific Railway Company has barely been enabled to earn a sufficient revenue to meet its fixed interest charge, in-

cluding taxes, and it has not been enabled to earn a sufficient revenue from the operation of its property to place the necessary betterments and improvements upon its property, either in the way of maintenance or permanent betterments, and especially in the way of additional equipment and rolling stock generally. It has only been enabled to keep its property in a fair condition for operation and not in a first-class condition. Most of its line is unballasted, and is in great need of heavy ballast at this time, especially the greater portion of its line in Louisiana. It also is in need of at least five thousand additional boxcars at this immediate time, and at least fifty additional engines. It is unable, however, on account of the want of revenue, either to make these improvements or to buy this equipment. From a full knowledge of the needs of The Texas & Pacific Ry. Co., I am of the opinion that The Texas & Pacific Ry. Co. requires, over and above its current revenues, each year the sum of at least two million dollars to be expended in betterments, permanent improvements and additional expenses in the way of improving its physical condition, and in addition to this sum it should have at least one million dollars each year to purchase additional equipment. As to the permanent improvements needed upon the property of The Texas & Pacific Ry. Co. in Louisiana, in my opinion it needs permanent improvements and betterments over its entire main line and all of its branch lines, especially in the way of ballasting and widening its roadway, and strengthening its bridges, and more than a million dollars could be expended yearly upon its main line and branch lines in the State of Louisiana in addition to what is now being expended, and this amount should be expended in order to put its property in such a physical condition as to render the best service possible to the public. If such improvements are made, they certainly will have to be made out of current earnings, as the company has no fund upon which it can draw for such improvement.

Interrogatory No. 5. If, in answer to the above interrogatory, you state that the Texas & Pacific Railroad Company has not a sufficient revenue to pay its fixed charges, which includes taxes  
 114 and its operating expenses, and to improve and better its property, and to add to its equipment, please state about what additional revenue it would require over and above its current revenues each year to be expended in betterments and permanent improvements and additional expenses in the way of improving its physical condition?

Also state what amount in the way of permanent improvements are needed upon the Texas & Pacific Railway Company's properties in the State of Louisiana. In this connection state in detail the character of improvements that are needed, if any, on the line of the Texas & Pacific Railway Company in Louisiana, both upon its main line and its branch lines and estimated cost of same. Also state whether or not such improvements have to be made out of current revenue or current earnings, if made at all.

NOTE.—There is nothing under the head of Answer to the Fifth Interrogatory; and the answer to the fifth direct interrogatory is probably covered by the answer to the fourth direct interrogatory.

Interrogatory No. 6: Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

In answer to the sixth direct interrogatory the witness answers:

All that I can add is that The Texas & Pacific Railway Company has put into betterments, improvements and equipment, and improving its property generally, every cent of its current earnings in excess of its legitimate operating expenses and its fixed interest charge, and that its current earnings are not sufficient to make such permanent improvements and betterments, and purchase equipment, and that any reduction in its revenues from any source will seriously cripple its ability to make these improvements and serve the public as they demand.

#### Cross-examination.

WALTER GUION, Attorney General of Louisiana, Solicitor for Defendants:

Defendants object to the second direct interrogatory for the reason that the same calls for the expression of an opinion or  
 115 for conclusions and not relevant facts. Defendants object also to the fourth direct interrogatory for the same reasons and because of irrelevancy since an insufficiency of revenues from the operation of plaintiff's property to meet fixed charges and to pay for betterments, equipments and permanent improvements would not justify a rate for the transportation of cotton seed and cotton seed products not shown in itself to be reasonable. Defendants, therefore, reserving as they do, the right to object to the introduction in evidence of the testimony of the witness L. S. Thorne, in answer to the said direct interrogatories, propounded the following cross-interrogatories:

Cross Interrogatory 1: What is the amount of the capital stock of the Texas & Pacific Railway, and what, if any, amount of actual money was realized from subscriptions to, or other disposition of same?

In answer to the first cross-interrogatory the witness answers:

The amount of the capital stock of The Texas & Pacific Railway Company, outstanding is, \$38,763,810, which represents the amount of money received for same. As a matter of fact, this stock was assessed an additional amount of ten dollars per share in order to take the road out of the hands of a receiver, and to meet existing obligations at that time. No dividend has ever been paid on this stock.

Cross-Interrogatory 2: What amount of mortgage bonds have been issued by the Texas & Pacific Railway Company, when were they issued, and what amount of such mortgage bonds are now outstanding; state also what amount of money was realized by the Texas & Pacific Railway Company upon all of said bonds and what disposition was made of same.

To the second cross-interrogatory the witness answers:

The entire amount of mortgage bonds that have been issued by



The Texas & Pacific Railway Company is \$76,876,564.61, and they were issued upon the following dates: 1875, \$22,386,000; 1888 and since that date to June 30, 1906, \$49,977,564.61; 1901 and since that date to June 30, 1906, \$4,513,000. Of this amount, \$54,621,531.32 was outstanding in June, 1906. The amount of money realized by The Texas & Pacific Railway Company upon all of said bonds was \$77,043,894.61. This money was used as follows: The issue of 1875 was for construction; the issue of 1888 was to  
 116 take up and retire the then outstanding securities of this company under the plan of reorganization of the finances of this company, commonly known as the modified agreement; the issue of 1901 was for the purpose of constructing branch lines in the States of Louisiana and Arkansas.

Cross-Interrogatory No. 3: What branch lines have been constructed and equipped by the Texas & Pacific Railway Company during the past ten years, give length and cost of each and where located?

To the third cross-interrogatory the witness answers:

The following branch lines have been constructed and acquired, all of which are in the State of Louisiana, except 33.11 of the T. S. & N. branch, which is located in the State of Arkansas: Port Allen Branch, 101.60; La Fourche Branch, 28.60; T. S. & N. Branch, 70.40; Avoyelles Branch, 56.70; Natchitoches Branch, 88.90; Napoleonville Branch, 15.50. Said branch lines have cost, up to June 30, 1906, \$6,854,319.13.

Cross-Interrogatory 4: How was the money raised to pay for the construction and equipment of such branch lines; was the same borrowed on mortgage, bond issue, or otherwise; or was it paid out of the surplus earnings of the railroad?

To the fourth cross-interrogatory the witness answers:

The money used for the construction and equipment of the branch lines was raised by issuing bonds to the extent of \$4,513,000. The additional sum of \$2,341,319.13 was paid out of the earnings of The Texas & Pacific Ry. Co., with the exception of \$167,330 premiums realized on sale of branch line bonds.

Cross-Interrogatory 5: How much did it actually cost to construct the main line of the Texas & Pacific Railroad in Louisiana aside from the equipment of rolling stock? By cost of construction is meant right of way, grading, all excavations, surfacing, etc., cost of rails and cross-ties and laying the track, as well as bridges, depot buildings, side tracks and terminals.

To the fifth cross-interrogatory the witness answers:

From records kept in the auditor's office as to the cost of the construction of the main line of The Texas & Pacific Railway Co. in Louisiana, it cost about the sum of \$50,192.90 per mile, including a portion of the equipment and rolling stock.

117 Cross-Interrogatory 6: State precisely under what arrangement or arrangements, contract or contracts the main line in Louisiana was built, and precisely how payment was made.

To the sixth cross-interrogatory the witness answers:

I am not advised as to the facts inquired about, and cannot answer.

Cross-Interrogatory 7: If you should say that any part of the

line was paid for in stock or bonds or in stocks and bonds, state the amount of each.

To the seventh cross-interrogatory the witness answers:

I am unable to answer.

Cross-Interrogatory 8: How and by whom was the valuation of the Texas & Pacific Railway in Louisiana made and given in for assessment to the State Board of Appraisers for the years 1905 and 1906?

To the eighth cross-interrogatory the witness answers:

The property of the Texas & Pacific Ry. Co. in Louisiana was appraised by the State Board of Appraisers for the year 1905-1906. Maj. W. H. Abrams, Land & Tax Commissioner, has charge of this matter for this road.

Cross-Interrogatory 9: What, if any, attempt has been made by the company to raise money to pay for such betterments and improvements as you may say it was necessary to make, other than revenues from operation.

To the ninth cross-interrogatory the witness answers:

No attempt has been made by this company to raise money with which to make additional betterments and improvements, as it has no way of raising money except upon its unsecured obligations.

Cross-Interrogatory 10: State whether or not it is cheaper to operate in Louisiana than in Texas, and if not, why not?

To the tenth cross-interrogatory the witness answers:

The only element that reduces the expense of the operation of a railroad in Louisiana is the fact that the grade line is much lower than in Texas, and more tonnage can be hauled with the same power, but this advantage is offset by many other disadvantages in the way of climatic conditions, excessive rains and increased cost of maintenance of way. Annual reports attached and called for herein show that the cost of operation in Louisiana is not much, if any, less than in Texas.

Cross-Interrogatory 11: How do your local tariffs in general in the States of Louisiana and Texas compare with each other, what is the average difference, if any?

To the eleventh cross-interrogatory he answers:

I am not familiar with the differences between local tariffs in Louisiana and Texas, but my information is the rates in Louisiana are much lower.

Cross-Interrogatory 12: What is the distance from Natchitoches to Shreveport by your present line?

To the twelfth cross-interrogatory he answers:

The distance from Natchitoches to Shreveport by the present line of The Texas & Pacific Railway Company is 70.40 miles.

Cross-Interrogatory 13: What was the total cost for constructing the line from Cypress and from Natchitoches to Shreveport, when was it built and ready for operation, who built the same, and what is the length of the new line?

To the thirteenth cross-interrogatory the witness answers:

The total cost for constructing the line from Cypress to Shreveport, to June 30, 1906, was \$1,652,856.65, same being 81.20 miles

in length, which include the purchase price of the old line Cypress to Natchitoches.

Cross-Interrogatory 14: Are not annual reports made by the management of the Texas & Pacific Railway Company to its stockholders. If yes, who has charge of such reports, and please annex to your answers hereto copies of such reports for or made during the years 1902, 1903, 1904, 1905 and 1906, marking the same exhibits A, B, C, D and E.

To the fourteenth cross-interrogatory the witness answers:

I hereto annex annual reports for the years 1902, 1903, 1904 and 1905, as called for. Report for 1906 has not been made.

119 Cross-Interrogatory 15. Has or not the tonnage handled by the Texas & Pacific increased on the average on the whole line and in Louisiana during the past seven years? If yes, state the extent of such increase for each year and state from what source you get the information.

To the fifteenth cross-interrogatory he answers:

The total tonnage for the years ending December 31, 1899, to 1905, inclusive, as shown by annual reports, was as follows:

1899 .....	2,606,980
1900 .....	2,891,322
1901 .....	3,792,692
1902 .....	3,815,682
1903 .....	4,072,660
1904 .....	3,673,350
1905 .....	4,156,701

Cross-Interrogatory 16. Do you know how the tariff of the Texas & Pacific on cotton seed and on cotton seed products compare with those in all the cotton producing states? If yes, which is higher on the average, and what is the average difference?

To the sixteenth cross-interrogatory the witness answers:

I am not familiar with the matters inquired about in this question.

Cross-Interrogatory 17. Please state the amounts of money charged by the Texas & Pacific Railway Company to operating expenses, or taken out of its revenues from operation, for the years 1902, 1903 and 1904, and the items of same for the entire line and for the State of Louisiana, unless you shall file the reports called for above and the same show these amounts.

To the seventeenth cross-interrogatory he answers:

The total operating expenses for the years ending December 31, 1902, 1903 and 1904, were as follows: 1902, entire line, \$8,221,078.06; Louisiana, \$2,312,771.22; 1903, entire line, \$8,173,112.51; Louisiana, \$2,618,634.34; 1904, entire line, \$7,951,967.04; Louisiana, \$2,633,841.23.

Cross-Interrogatory 18. If you should say that you can not produce and file the annual reports called for above, please state why you cannot; and give the name of the person in the employ of the Texas & Pacific Railway Co. who can and state where he is.

To the eighteenth cross-interrogatory the witness answers:  
I have filed the reports.

Cross-Interrogatory 19. Annex to your answers a statement showing the amount paid out by the Texas & Pacific Railway Company during the years 1902, 1903, 1904, 1905 and 1906 for damages, whether for injuries done or caused to persons and property by mismanagement or negligence in the running of trains; injuries done to or suffered by passengers or others by the misconduct of employees of the railroad company, or otherwise; or loss or injury caused to property or persons by refusing, failing or neglecting to comply with and perform the duties and obligations of a common carrier. Annex a detailed and itemized statement of same to your answers.

To the nineteenth cross-interrogatory the witness answers:

I attach hereto statement of amounts charged to loss and damage and injuries to persons for the years 1902, 1903, 1904, 1905 and 1906.

(Signed)

L. S. THORNE.

Sworn to and subscribed before me this the 9th day of February,  
A. D. 1907.

(Signed)

[SEAL.]

W. H. COPE,

Notary Public, Dallas Co., Texas.

THE STATE OF TEXAS,  
County of Dallas:

I, W. H. Cope, a notary public in and for the County of Dallas, State of Texas, do hereby certify that the foregoing answers of L. S. Thorne, the witness before named, were made before me, and were sworn to and subscribed before me by the said witness L. S. Thorne.

Given under my official signature and seal this the 9th day of February, A. D. 1907.

(Signed)

[SEAL.]

W. H. COPE,

Notary Public, Dallas Co., Texas.

## Answer to Cross-interrogatory 19.

*Statement of Amounts Charged to Loss and Damage and Injuries to Persons.*

Loss & Damage:	Year:	1902.	1903.	1904.	1905.	1906.	Total.
(Property, common) .....		3,833.15	6,855.52	4,078.96	5,332.44	2,795.55	22,745.62
Property, passenger .....		2,264.29	1,233.32	1,598.26	3,135.84	1,683.84	9,915.53
Stock, passenger .....		19,273.08	18,826.53	20,485.02	17,942.46	16,266.74	92,793.83
Baggage .....		4,221.63	901.44	1,155.67	2,659.77	3,744.87	12,683.38
Property, freight .....		5,186.18	6,603.52	12,653.48	9,170.97	3,071.08	36,685.23
Stock, freight .....		26,285.72	24,869.56	21,285.79	19,988.24	20,417.54	112,846.85
Freight .....		59,084.96	85,882.14	113,019.58	134,356.86	175,789.34	568,132.88

*Injuries to Persons:*

(Common) .....	10,719.71	25,087.60	26,120.35	11,644.23	10,741.44	84,313.33
Passenger .....	75,531.63	71,322.57	45,674.19	55,810.47	87,195.99	335,534.85
Freight .....	102,191.36	96,584.04	62,135.36	57,333.64	50,727.32	368,971.72
Total .....	308,441.71	338,166.24	308,206.66	317,374.90	372,433.71	1,644,623.22



*Testimony on Behalf of Complainant.*

Filed March 7, 1908.

United States Circuit Court, Eastern District of Louisiana.

No. —.

TEXAS &amp; PACIFIC RAILWAY CO.

VS.

RAILROAD COMMISSION OF LOUISIANA.

Testimony taken in the above numbered and entitled cause on behalf of the complainant before Hon. Solomon Wolff, Special Master herein, at his office, Canal-Louisiana Bank Bldg., on the 2nd day of October, 1907:

**Appearances:**

T. J. Freeman, Esq., Solicitor for Complainant.  
Judge Walter Guion, Attorney General State of Louisiana.  
Gen. T. Miller, Associate Counsel.

WILLIAM F. BRAGGINS, witness, sworn and examined on behalf of complainant, testified as follows:

**Direct examination.****By Judge FREEMAN:**

Q. 1. State your name and your occupation at this time?

A. William F. Braggins, general agent of the Texas and Pacific Railway Company, New Orleans.

Q. 2. How long have you been in the employment of the Texas and Pacific Railway Company in your present position, and what positions have you held with the Texas and Pacific Railway Company in the last ten years?

A. Well, I have been in practically the same position for the past ten years, under a little different title; I have been in New Orleans nine years next February.

Q. 3. State in a general way what your duties are.

A. Well, looking after rates, the making of rates, the quoting of rates and the general solicitation of business; general traffic matters in the State of Louisiana.

Q. 4. Are you familiar with the tariffs in effect in Louisiana on cotton-seed and cotton-seed products? If so, state whether or not in your judgment, from your experience in traffic matters and especially in rates, whether or not the present rates in effect on

123 the Texas and Pacific Railway in Louisiana on cotton-seed and cotton-seed products are reasonable, fair and just, and give your reasons in detail as to why you think they are or are not?

A. I am and I believe those rates to be fair, reasonable and just,

for the reason that the cotton-seed oil mill industry has been built up, increased and expanded to all parts of the state on the line of the Texas and Pacific Railway Company, and that these industries are prosperous and doing good business and from my information, making money.

### Objection.

Judge GUION: The testimony of the witness in respect to his giving evidence concerning the fact that the cotton-seed oil mills in Louisiana are prosperous and making money is objected to, because it is hearsay, the witness not having stated that he had any personal knowledge of their operations.

Q. 5. Are there any other reasons why you think the present rates on cotton-seed and cotton-seed products in Louisiana are reasonable, fair and just other than those you have stated?

A. I have had occasion to give particular attention to this matter, consulted with the oil mill interests generally, and have at various times been called upon by them to consider the application of the rates in effect and the effect they had on the business. I have been present at the numerous hearings before the Railroad Commission of Louisiana; I heard the arguments of all the various interests involved in this business and have reached this conclusion on account of the information so obtained.

Q. 6. Are you familiar, Mr. Braggins, with the conditions that brought about the issuance by the Railroad Commission of Louisiana of their proposed tariff, or rates on cotton-seed or cotton-seed products on the Texas and Pacific Railway being their Order No. 484, and if so, state in a general way what the said conditions were; and also state whether or not, in your opinion as a practical rate man, the Railroad Commission of Louisiana's proposed rates are reasonable, fair and just; and if not, state why not?

A. I am; what I believe or what I consider brought about the issuance of this order, was complaints made to the Railroad Commission of Louisiana by certain oil mills, particularly the oil mills of New Orleans, and their complaints arose from the fact that the oil mill industry had extended practically to all parts of the state and into the territory where the seed is produced, thus cutting off to a certain extent the supply of seed to these oil mills, making competition in the vicinity of the different oil mills greater and the purchase of seed for shipment to the New Orleans mills more difficult on account of the fact that these mills located directly where the seed is grown could procure seed to better advantage than the New Orleans mills, owing to their nearness and to the local interests added to the fact that the oil mill companies operating these interior mills in many cases were composed of people interested in the raising of seed and interested in the enterprises, and consequently being disposed to sell their seed to their home industries. I do not consider them fair, reasonable and just, for the reason, first, that it will deprive the railway company of a large amount of revenue, it will change the conditions under which these industries in the interior have grown up and been established, it

will, to some extent, deprive these interior industries of the natural advantage of being located directly in the territory where the seed is grown which natural advantage caused them to locate where they did.

Q. 7. Is the effect of the commission's proposed tariff to offset the natural advantages that the interior mills have as against the New Orleans mills by the reduction in the long distance rate?

A. Yes, sir.

Q. 8. The interior mills have a natural advantage on account of being located in a territory where the seed is produced; is not that a fact?

A. Yes, sir; and that is the principal reason why they selected the locations for their mills.

Q. 9. Now, then, if this tariff puts the New Orleans mills upon a parity with the interior mills so as to offset this natural advantage, at whose expense is this condition brought about?

A. At the expense of the railway company.

Q. 10. In your opinion, Mr. Braggins, do the New Orleans mills have an advantage under the commission's proposed tariff over the interior mills?

A. Yes, sir; I think they do.

Q. 11. State in what particulars?

A. In that they have to pay no freight on the products to the port; they have their products here and can hold them at their own plants, subject to conditions which enable them to select the time when they sell their products and when they will export them, such conditions being that by having their products on the 125 spot they can take advantage of ocean rate conditions and get low ocean rates which the interior mills cannot get. They store their products in their own warehouses at very little expense while if the interior mills were to ship their products here and hold them they would be at great expense or considerable expense for storage, insurance and subject to brokerage fees and various expenses that the mills located in New Orleans do not have.

Q. 12. Mr. Braggins, state whether or not the Railroad Commission of Louisiana had, previous to the hearing of November 9th, that being the hearing at which Order No. 484 was issued, held any other hearing to investigate the matter of changing existing cotton-seed rates and by existing cotton-seed rates I mean the rates we have in effect at this time, and if so, please give the dates of such other hearings and state if you were present at the same, and whether or not the subject of the change in existing rates on cotton-seed and cotton-seed products, oil and cake was fully investigated; also state the result of said hearings and if the commission handed down decisions upon same; please attach a copy of their decisions or conclusions, as an exhibit to your answer hereto and as a part thereof?

A. They had several hearings; one held in New Orleans on October 5, 1904, continued on October 6th, and concluded on October 7th, and an order issued by the commission on November 15th, which order provided for another hearing, wherein the commission proposed a scale of rates in Circular No. 118, for consideration at this

next hearing and this next hearing was held in Baton Rouge on May 22, 1905, when this scale of rates in Circular No. 118 was considered and the commission issued its Order No. 457 denying the complaint and dismissing the case. This Circular No. 118 named the rates which the commission afterwards promulgated or ordered in their Order No. 484. These two orders are numbered 406 and 457.

Q. 13. Now, as I understand from your testimony, the commission handed down, previous to their Order No. 484, two decisions affecting rates on cotton-seed and cotton-seed products; that is, Order 406 and Order 457?

A. Yes, sir.

Q. 14. Order 406 is dated November 15, 1904, and Order 457 is dated July 11, 1905; I want to ask you whether or not at the hearing that brought forth Order 406 the entire question of reducing cotton-seed rates, and the reason for reducing cotton-seed rates was entered into and the matter thoroughly investigated?

A. Yes, sir.

Q. 15. Also state in that connection whether or not various interests were represented at that hearing, whether railroad or otherwise?

A. Every interest involved in the raising of cotton-seed, the ginning of cotton-seed, the manufacture of cotton-seed into products and, in fact, every interest in the business was represented very largely at that hearing, and a greater representation of all interests, and a more complete representation of all interests than at any previous or subsequent hearing on the question before the Railroad Commission of Louisiana.

Q. 16. Now, in the order handed down by the commission, No. 406, the commission say: "At the hearing testimony of many witnesses was taken and a great amount of documentary evidence submitted." Was that true on behalf of the Texas & Pacific Railway Company as well as other interests?

A. Yes, sir.

Q. 17. The commission further say: "The commission has carefully considered the record in this case. There appears to be some necessity for a change in some of the rates now being charged in the state, especially the maximum rates for long distances, these being the rates which are of most importance to the oil mills located in the City of New Orleans." Was any testimony taken before the commission relative to the status of the oil mills situated in the City of New Orleans?

A. Yes, sir.

Q. 18. Practically the same contention that has been made here on the part of the mills in New Orleans, is not that so?

A. Yes, sir.

Q. 19. The commission further state: "The present adjustment of rates in the state is such that each oil mill enjoys rates which do not very [vary] widely from points located at similar distances from each mill." Does that condition exist to-day as to the Texas and Pacific Railway Company and mills located along its line?

A. Yes, sir.



Q. 20. There has been no change in that condition?

A. No, sir; no change.

Q. 21. It further states: "The commission believes that the most equitable adjustment of this question will be the establishment of uniform mileage rates, with a maximum rate of 15 cents per 100 pounds." It further says, in conclusion: "It is therefore decided that a tariff of mileage rates on cotton-seed will be prepared by the commission at once, and all the interests in the state will be granted a hearing on this proposed tariff at a subsequent session of the commission, and it is so ordered." Now, then, is it not a fact that in accordance with the statement of the commission as embodied in this order, that they would give a subsequent hearing on this question of a mileage rate and a maximum rate of 15 cents per 100 pounds, that the commission did have a hearing to discuss rates upon that basis and that at that hearing all the various interests, both railroad and oil mills, and the various other interests were heard?

A. Yes, sir; it is a fact.

Q. 22. Were you present at that hearing?

A. I was.

Q. 23. Was the matter thoroughly investigated at that hearing?

A. It was.

Q. 24. Were the various interests heard at that hearing?

A. Yes, sir.

Q. 25. Were the New Orleans mills heard at that hearing?

A. They were.

Q. 26. The result of that hearing, was the order handed down by the commission as Order No. 457 which you made an exhibit to your answers here?

A. Yes, sir.

Q. 27. The commission, in their Order No. 457, make the following statement: "The principal contention made by the New Orleans mills was that the present rates were unreasonable in themselves and excessive, especially for the long hauls, and therefore should be reduced, claiming also that under the existing adjustment of rates the mills situated in the City of New Orleans were at a disadvantage in the territory adjacent to country mills, by reason of the lower rates enjoyed by such mills." You were present at that hearing and heard testimony upon that issue?

A. Yes, sir.

Q. 28. The order further provides: "On the other hand, the country millers, without exception, contended that even with the present adjustment of rates, New Orleans mills had an advantage over them in rates on fuel and materials used in the manufacture of the products of cotton-seed and by reason of the rates on products which the country mills had to pay to the market—New Orleans being one of the primary markets and principal export points for the products of cotton-seed. The cotton-seed producers desired the present conditions to remain unchanged and requested the commission not to adopt the rates proposed by them." Is it



not a fact that the rate proposed by the commission at this hearing are the rates that were subsequently put into effect by the commission under Order No. 484?

A. That is my understanding; the record shows for itself.

Q. 29. Was evidence taken on this proposition I have just read?

A. Yes, sir.

Q. 30. The commission further provided: "The question involved in this case is one of too great importance to be disposed of without the most careful consideration and upon the fullest information. The interests of all parties must be properly weighed and adjusted. The testimony has been full and the commission's examination of the facts has been exhaustive. No one, save the New Orleans mills, are complaining of present conditions and no one appears to be injured by the rates as they are now adjusted. The character of a rate on any staple product must be expensive and flexible. There may arise cases where an adjustment of rates on any railroad may become necessary at any time. The commission does not pretend to say that such cases do not exist, but in the present instance the only matter which is before the commission for consideration, is the adoption of a uniform mileage tariff to apply on cotton-seed and cotton-seed products. The record in this case does not develop a sufficient reason for the adoption of the rates proposed in Circular No. 118." The rates proposed in Circular No. 118 I will ask you, and the rates proposed in Order No. 484, are practically the same?

A. Yes, sir.

Q. 31. And the rates now in existence on the Texas and Pacific Railway are the rates that were in existence at the time this hearing was had?

A. Yes, sir.

Q. 32. The commission further say: "After the most careful deliberation the commission has reached the conclusion that the adoption of the proposed rates would seriously disorganize the industries involved, and would not result in particular benefit to any of those interested." They further provide as follows: "The commission further considers that complainants against the rates from or to any locality should be adjusted as they arise, believing such a procedure to be far more satisfactory than to attempt, on account of occasional irregularities in rates on these products, to readjust the traffic, commercial and economic conditions of the entire state."

Now, I will ask you, Mr. Braggins, whether or not there has been any change in the conditions, either concerning the status of the railway companies or the status of the oil mill companies, or the status of the shippers of the seed, or the status of the interior mills as compared with the status of the New Orleans mills since these two hearings were had, and between the time of these two hearings and the issuance of the order of the commission on November 9, 1905?

A. Absolutely no change in the conditions at all. The difference in time between those two hearings is about four or five months and there were no changes in the conditions in that time nor has there been any since.

Q. 33. And the mileage rate proposed at those hearings and the one as suggested by the commission is practically the same rate that the commission put in on November 9, 1905. Were you present at the hearing on November 9th?

A. Yes, sir; I was.

Q. 34. How did that hearing compare in the way of interests involved, and how did it compare in the way of attendance and thorough investigation with the two previous meetings on the same matter?

A. Well, the attendance was nothing like as great; the interests were not so fully represented and in fact as a comparison between the hearings there is no comparison. At the hearing when Order No. 406 was issued, held in New Orleans, there was, if not every, nearly every oil mill in the State of Louisiana represented and particularly those situated on the line of the Texas and Pacific Railway, the Planters Association of Caddo Parish and the representatives of gins were present, while there was nothing like as full a representation from oil mills or other interests present at the hearing in November, 1905.

Offer—Judge FREEMAN: Complainant offers in evidence the two exhibits, marked "Braggins 1" and "Braggins 2" in connection with the testimony of the witness and attached to and made a part thereof.

Q. 35. You have made up a map showing the location of the various oil mills on the Texas and Pacific Railway in Louisiana, will you please attach that also as a part of your answer?

A. Yes, sir.

Offer—Judge FREEMAN: Complainant offers in evidence 130 map referred to, marked "Braggins 3" in connection with the testimony of the witness and attached to and made a part thereof.

Q. 36. Have you had occasion to investigate whether or not cotton-seed products moving from any point in Arkansas or Mississippi for export to any port located in the State of Arkansas and Mississippi, and if you state there are no ports of exports in those states, then please attach as part of your answer to this question the tariff of rates now in effect, showing the rates from interior points in Arkansas and Mississippi to the port of export on the products of cotton-seed; that is, on meal, cake and oil?

A. There are no ports of export in the State of Arkansas and only one in the State of Mississippi, Gulfport, from which port there is no great amount of traffic exported other than lumber, and no regular lines of ocean vessels sailing from that port, and only comparatively small ocean vessels engaged even in the lumber business from that port.

Q. 37. Take certain points, naming them, in Arkansas, and state what the rate on cotton-seed meal, oil and cake would be to the port of New Orleans.

A. Well, the rate on cotton-seed meal and cake from Brinkley,

Camden and Forest City, Arkansas, and various others which show here in the tariff is 15 cents per 100 pounds; and from Fort Smith, Arkansas, 17 1/2 cents per 100 pounds. The rate on cotton-seed oil to New Orleans from Brinkley, Camden and Forest City, Arkansas, is 20 cents per 100 pounds. From Fort Smith, Arkansas, 25 cents per 100 pounds. From Jonesboro and Little Rock, Arkansas, 20 cents per 100 pounds. Now, that is from Arkansas. The date of this tariff is July 22, 1907. This is the present rate in effect. Now, there is on the list of Mississippi points here to New Orleans, 15 cents per 100 pounds on cotton-seed oil; that is practically the rate from all Mississippi points on cotton-seed oil. On cotton-seed meal and cake to New Orleans the rates from Mississippi points, as shown in I. C. Tariff B-3821, are from .1035 cents to .1135 cents per 100 pounds.

Offer—Judge FREEMAN: Complainant offers in evidence exhibits, marked "Braggins 4" and "Braggins 5" in connection with the testimony of the witness. Also exhibit marked "Braggins 6."

131 Q. 38. Do you know of any other facts that have any bearing on the issues in this case; if so, please state them, not already covered by your previous answers?

A. The cotton-seed mill business in the City of New Orleans does not consist entirely in the crushing of seed and the manufacture of cotton-seed products; but these mills are engaged largely in refining crude oil and exporting cotton-seed oil, meal and cake, and a large amount of the products of the interior mills are shipped to the New Orleans mills which also manufacture oil into lard substitutes and derive a profit from the handling of the products of the interior mills. I believe that is all.

Q. 39. Do these facts give a still greater advantage or not to the New Orleans mills over the interior mills?

A. I consider they do.

#### Cross-examination.

By General MILLER:

X Q. 1. The first hearing before the Railroad Commission of Louisiana, in New Orleans, to which you have referred, the petition upon which that arose was a complaint against a number of railroads, was it not?

A. No, sir; I do not think it was a complaint against anybody in particular.

X Q. 2. You recollect—

A. It was a general hearing.

X Q. 3. Do you recollect whose petition it was upon which that hearing was had?

A. I think it was the Standard Cotton Oil Company's petition.

X Q. 4. Of this city?

A. Yes, sir.

X Q. 5. Did it or not involve the Southern Pacific and the Texas

and Pacific in conjunction with the St. Louis, Iron Mountain and others?

A. The rates were considered in connection——

X Q. 6. I am asking now who simply filed the petition—not the decision, I will get to that later?

A. I do not know whether that petition called for those lines or not; I am not clear on that; possibly the records would show.

X Q. 7. Do you remember that it was pressed on the commission by the counsel who represented in argument the Texas and Pacific and the St. Louis, Iron Mountain and Southern,

132 Mr. Hudson, that in response to the claim and showing made on behalf of the New Orleans mills that the rate to New Orleans was excessive and unreasonable, that the rate then in force was necessary in order to maintain a parity between the interior mills and those at New Orleans?

A. The Iron Mountain in Mr. Hudson's argument?

X Q. 8. Yes.

A. My recollection—I do not know that I exactly understand your question.

X Q. 9. I will state it more simply——

A. The rates——

X Q. 10. If you will let me, I will put it so you will understand it. You remember that Mr. Hudson appeared as counsel for the railroads at that hearing?

A. Not for the Texas and Pacific Railway Company. I so stated there at the meeting; he represented the Iron Mountain Railway.

X Q. 11. But the matter in which he appeared involved the joint rate sought to be put in force, or a reduction in the joint rate of the Iron Mountain and the Texas and Pacific to New Orleans?

A. There was no joint rate and the contention was that there should be. At that time the rates were simply a combination of locals which made them, for it was considered that they were excessive, the combination of locals.

X Q. 12. There was a certain division of rates between those two roads, based on mileage, was there not?

A. I think up to that time there was not.

X Q. 13. Was it not admitted in response to a telegram sent by the commission or by order of the commission to the traffic representative of the Texas and Pacific Railway Company at Dallas, that there was a division of the rate between those two roads, on a mileage basis?

A. The question was asked as to what the division of rates—not the rate but rates—between the Iron Mountain and Texas and Pacific was, and it was in response to that question that this telegram was sent and reply was received.

X Q. 14. And do you remember what that reply was?

A. My recollection is that the reply was that it was a mileage rate, with a certain maximum or something of that sort.

X Q. 15. 125 miles?

A. I think it was 125 miles.

X Q. 16. For the Texas and Pacific?



A. For either line, a maximum of 125 miles.

133 X Q. 17. It had been stated by yourself that no representative of the Texas and Pacific Railway Company at New Orleans was able to state what the division was at that time?

A. I think you are right.

X Q. 18. Now, as a matter of fact, it was the rate resulting from this combination of locals or whatever you choose to call it, by the Iron Mountain and the Texas and Pacific to New Orleans on cotton-seed from points north of Red River up to the line of the V. S. & P. Railroad, was it not?

A. I do not know that I could tell you.

X Q. 19. What is it now?

A. I think there was a rate of 20 cents per 100 pounds established after that time.

X Q. 20. Do you mean to say that since the hearing in New Orleans the rate on seed has been raised by those two lines?

A. No, sir; I say it has been reduced.

X Q. 21. Do you mean to say it was more than 20 cents per 100 pounds at the time of the hearing?

A. There was no through rate at the time.

X Q. 22. Was not that only through from points north of the V. S. & P. Railroad line?

A. No, sir; I do not think, up to that time, there had been any through rates established.

X Q. 23. I do not say through rate; I am talking about a combination of locals?

A. A combination of locals?

X Q. 24. In short, there was seed shipped by those two roads from points along the line of the Iron Mountain to New Orleans?

A. I do not think so, up to that time; I do not think the rate would allow them to do it.

X Q. 25. The rate then was prohibitive in effect?

A. As it is, at least, generally in cases of that sort, each line, each set of oil mills endeavor to have the seed go to the mills located on the line of road where they originate.

X Q. 26. Don't you remember it developed at that hearing that the rate on seed to New Orleans, either under a division between the two roads or a joint traffic arrangement between the two roads or a combination of locals between the two roads was as high as \$4.00 per ton, or 20 cents per 100 pounds up to the V. S. & P. Railroad, and \$4.50 per ton from points north of that point to New Orleans?

A. I think it was that or greater.

134 X Q. 27. Do you remember that it was contended by some of the representatives of the interior mills that the effect of a reduction in the rate to New Orleans—especially by Mr. Quarles representing some mill up in Tensas Parish—that the effect of such a reduction of as much as 50 cents per ton would add that much to the price of seed and put the local interior mill out of business?

A. I never heard any such argument as that.



X Q. 28. Do you remember that it was contended on behalf of the planters or Planters Association, that the effect of a reduction in the rate which would permit the New Orleans mills to buy cotton-seed in the interior, would be or might be putting the local mills out of business, and thereby put the planters at the mercy of the seaboard mills and result ultimately in the price being much lower for seed?

A. I cannot say that I got that impression from the argument.

X Q. 29. Don't you remember that testimony? Don't you recollect that the testimony of the representative of this Planters Association which you spoke of was to that effect, and that was the argument?

A. I do not. I did not get that impression from his argument.

X Q. 30. Did any counsel appear for the railroads at that hearing in New Orleans except Mr. Hudson?

A. I do not remember whether there was any other counsel there or not.

X Q. 31. Did any lawyer or anybody else make an argument before the commission against the proposed reduction in the cotton-seed rate to New Orleans by putting in a joint rate over the Iron Mountain and the Texas and Pacific, other than Mr. Hudson?

A. No, sir; I think not.

X Q. 32. Do you recollect that Mr. Hudson's position was that the railroads justified and could justify what was claimed to be an excessive rate against New Orleans, on the theory that it was necessary to protect these interior mills along their line, and that they had a rate to foster and promote these industries, both for the benefit of the railroads and of the locals and of the industries themselves?

A. Well, I don't know that I heard Mr. Hudson's arguments or not. I was not interested in all the arguments; I was looking out for the Texas and Pacific Railway Company and some of the time I was not there when the arguments were being made. He may have made such an argument.

135 X Q. 33. I wish you would recall it, because I am perfectly clear in my memory that you were there?

A. I cannot recollect that argument; it is possible he made it, I do not know but what he did.

X Q. 34. Do you remember the statement of some representative or representatives of the interior mills, that the effect of a reduction permitting the New Orleans mills to buy seed in their territory would be to increase the price of seed and put them out of business?

A. No.

X Q. 35. Do you remember whether the railroad company—your company—sent out a circular letter or letters to the different interior mills, urging them to be present at this hearing?

A. No, sir.

X Q. 36. And assist in maintaining your rate?

A. Our company did not.

X Q. 37. Do you know whether they did or not?

A. I know our company did not.

X Q. 38. How do you know?

A. Well, if such a circular had been sent out I think it would have come from me.

X Q. 39. Don't you remember that letters of that sort were produced before the commission?

A. Yes, sir; but not from the representatives of the Texas and Pacific Railway Company.

X Q. 40. Do you recollect what road it was?

A. Yes, sir; the Iron Mountain. Mr. Anderson was the author of them.

X Q. 41. Do you know whether that was done after a conference with any other road interested?

A. Not that I know of.

X Q. 42. Do you know whether free transportation was given to representatives of the Planters Association and of the interior mills who came by those two lines of railroad to attend that hearing?

A. None that I know of.

X Q. 43. Well, is there much movement of seed to New Orleans by your road from points north of Plaquemine, this way?

A. There is some considerable movement.

X Q. 44. Where does that movement begin?

A. The principal movement is up in the vicinity of Gros Tete, Maringouin and in that section where a special rate is in effect.

136 X Q. 45. That special rate is produced by river competition, is it not?

A. No, sir; that is a special rate ordered in by the Railroad Commission of Louisiana.

X Q. 46. Now, there is a movement from all along the Texas and Pacific Railway from Avoyelles Parish, from points north of Alexandria, from points on the New Roads branch; how does that movement compare in volume or bulk with the movement of seed to New Orleans by your line five years ago or six years ago?

A. Well, I have not made a comparison, but I should say it was less.

X Q. 47. How long did you keep in force the \$1.50 rate that used to prevail to New Orleans by your line north of Port Allen?

A. We kept that in effect, I suppose, a couple of years after that line was built.

X Q. 48. There was a considerable movement on that rate to New Orleans, was there not?

A. I do not know that there was so very much; there was some. I can give you a reason for it now, since I think of it. There was—for the reason there was no oil mill there. After the oil mill was built at Torras, and after the oil mill was built at New Roads, they naturally bought all seed in the vicinity of their mills, and, of course, that much less seed came to New Orleans, except what went by boat.

X Q. 49. Didn't your road assist them in buying those seed by raising the rate to New Orleans when that Torras mill was built?

A. Our road raised the rates on the request of Mr. J. C. Hamil-

ton, who has testified in this case and who was interested in the oil mill at Batchelor.

X Q. 50. You raised the rate to New Orleans at the request of Mr. Hamilton?

A. In other words, we canceled the special rate by authority of the Railroad Commission on the request of Mr. Hamilton and myself.

X Q. 51. Mr. Hamilton did not address the request to the commission?

A. Yes, sir; jointly with me, went before the commission and asked this.

X Q. 52. That was ex parte, of course; that is to say, the New Orleans mills were not heard on that proposition at all?

A. I know that Mr. Hamilton and myself went before the commission and asked for it and it was granted.

137 By the MASTER:

Q. You were the only ones who appeared?

A. Yes; I think that is right.

By General MILLER:

X Q. 53. The purpose of that was to give, of course, the mill located up there an advantage in that territory, was it not, whether you call it a natural advantage or any other?

A. Well, now, I would have to qualify my answer to that a little; the rate of \$1.50 a ton that was in effect there prior to and when those mills were built was put in for the purpose of meeting river competition. After those mills were built the necessity for meeting the river competition did not exist so far as the Texas and Pacific Railway was concerned, because these oil mills—new oil mills—were in a position to buy the seed along the line of the Texas and Pacific Railway, ship it into their mills and could meet the river competition without the necessity of this low rate. Now, that was the principal incentive on my part in asking for the cancellation of this special rate; it was not necessary from a transportation standpoint.

By Judge GUION:

X Q. 54. Since that cancellation of the rate of \$1.50, and the putting in of this rate by the commission, at the request of Mr. Hamilton and yourself, there has been very much less seed brought to the New Orleans mills from that territory, has there not? Don't you know that to be a fact, by the Texas and Pacific Railway?

A. Without making a comparison I cannot say that the change in that rate made this difference in seed to New Orleans. My opinion is that the building of those oil mills is what prevented the seed from coming to New Orleans as against—

X Q. 55. I am not asking what it did; I am asking since the putting in of that rate. I don't say what caused it?

A. All right, but I think the declining of the shipment of seed to New Orleans was before the change in this rate and not after it. In other words it declined when these oil mills were built there.

By General MILLER:

X Q. 56. You are not prepared to challenge the statements of the representatives of the oil mills who have testified here, are you; that there would be a free movement of seed to New Orleans by your line under the tariff proposed by the Railroad Commission?

A. No, sir; nor would I be prepared to admit it. I would have to experiment; that is the only thing that would prove it.

X Q. 57. Now, treating the transportation of cotton seed alone, with reference to the earnings that the railroad makes from it, is it not evident to you that an increase in the movement to New Orleans from the territory where seed is most largely produced would increase the revenue from that source?

A. No, sir.

X Q. 58. If you had more seed to haul a distance of from 120 to 175 miles on the commission's rate, as proposed, would you not make more money directly out of the seed than you make carrying seed now?

A. If we had more to haul, of course, we would get more money, provided, if we got enough to haul to make up the difference in rate; that is, if we got more seed.

By Judge GUION:

X Q. 59. If you got no revenue whatever from the product of the seed manufactured at the country or local mills; for instance, if that product was consumed right there on the spot and the seed that is used in the crush to bring about that product was brought to New Orleans instead of to the local mills, would you not get more revenue out of the seed than by carrying it to the local mills, as now, at your own rate?

A. The seed alone, of course, we would get more revenue out of it if it was all to come to New Orleans instead of going to the local mills, because the rate is greater to New Orleans than to the local mills.

X Q. 60. And the haul is longer, is it not?

A. As a rule; yes, sir.

By General MILLER:

X Q. 61. Have you got the cotton-seed tariff of the Illinois Central and of the Yazoo and Mississippi Valley Railroads, from Mississippi points to New Orleans?

A. No: I think Mr. Barrow filed them.

X Q. 62. When was your Cinclair rate on cotton-seed put in, and at whose solicitation, and what were the reasons for that differential, so-called?

A. The Cinclair rates were put in when the oil mill was built; I have not got the exact date. I know of no differential in their favor.

139 X Q. 63. Do you know of any other point on your line where there is an oil mill that has as low or lower rate for corresponding distances than Cinclair?

A. I know where there are oil mills on our line that have rates



as low as rates to the Cinclair mill for similar distances, with the exception possibly of some wagon haul rates.

X Q. 64. I understood that it was admitted or shown by a comparison of your tariffs, that Cinclair had a lower rate for corresponding distances than, perhaps, any other point on the line. My understanding was that there was an attempt to justify that on the motion that it was on or near the Mississippi River, and that it was necessary to put in a rate of that sort in order to endeavor to put seed on your line?

A. I think that is the product rate, perhaps.

X Q. 65. No; I am speaking of the cotton-seed rates. Are you familiar with the rates to Cinclair?

A. I have them in my files.

X Q. 66. I understand, but do you remember what the Cinclair rate is?

A. Well, I know they have the same mileage rate in a good many cases as other mills where there is a special rate in effect; at some other mill that is in competition with them, they have got that same special. For instance, I think there is a special rate from Bunkie, perhaps; that applies to other mills that have also—

X Q. 67. Do you remember when the present Cinclair rate was put in?

A. I remember when it was, but I cannot call the date without looking it up.

X Q. 68. About how long ago?

A. I should say about four years ago.

X Q. 69. There has been no change, not since then, you remember?

A. I do not recall any.

X Q. 70. At whose instance was this present tariff put in by the Railroad Commission?

A. The Long Bridge Cotton Oil Company filed a complaint; they did not prosecute it to any extent or in any way at all for that matter.

X Q. 71. Where is the Long Bridge Cotton Company located?

A. It is on our Avoyelles division, about ten miles from Bunkie.

X Q. 72. From what points was that \$1.50 rate in force that you spoke of a while ago, and that was taken out at the instance of Mr. Hamilton?

A. It was from points on the river branch, running from Baton Rouge junction up through Port Allen to Torras.

X Q. 73. How close did that line run to the river?

A. It varies. In some places it is right near the river. Like all these roads that parallel the river, it does not reach the river at all points.

X Q. 74. Torras is on Red River?

A. Is on what they call Old River.

X Q. 75. How far is Torras from the Mississippi River?

A. I suppose it is from the Mississippi River—I suppose it is from the mouth of Old River or Red River, it is Red River and the Atchafalaya; from there it is about a mile to the Mississippi River.



X Q. 76.—Don't you remember the average distance on the Port Allen branch from the river?

A. I could not tell you the average distance. At Morganza it is perhaps one-quarter of a mile; at Batchelor it is perhaps half a mile; at New Roads it is six miles.

X Q. 77. Do you know what the average steamboat rate has been from Torras to points below Torras or that neighborhood, Torras not being a landing to New Orleans in the last four or five years?

A. Not that long, perhaps, but in the last three or four years, say, it has been \$2.00 per ton, according to my information.

X Q. 78. After this mill was established up there you did not meet the steamboat rates any more?

A. We did not consider their rates at all any more.

X Q. 79. And now what is the rate from that Port Allen to New Orleans?

A. It is our regular mileage rate; I think, in the neighborhood of Torras it is 15 cents, I think.

X Q. 80. \$3.00 a ton against the old rate of \$1.50 a ton?

A. Wait a minute; I think it is 13 cents; it is a regular mileage scale. I think it is 13 cents from New Roads.

X Q. 81. If the tariff permitted, what would be about the average distance that cotton-seed would come over your line to New Orleans?

A. Well, if the tariff permitted, it would come the whole distance of the line, I suppose; a low enough rate would bring it.

X Q. 82. I speak of the territory on your line where there is a great production of cotton-seed, and where the competition with, say Shreveport, might not be so active?

A. Between 100 and 200 miles.

By Judge GUION:

X Q. 83. Did I understand you to say you had consulted certain cotton-seed oil mills concerning the rates to be put in effect on cotton-seed transportation?

A. Well, I had better put that that they consulted me at various times; it is not an unusual thing for any industry on our line to consult me regarding their rates.

X Q. 84. Now, were any of the city oil mills among those who consulted you?

A. Yes, sir; I have been consulted, I expect, by every oil mill on the line of our road at various times.

X Q. 85. Can you name any oil mills in the City of New Orleans that have ever subscribed to or acquiesced in the present rate the Texas and Pacific Railway Company is charging for the transportation of cotton-seed?

A. You mean the New Orleans mills?

X Q. 86. Yes.

A. Well, I don't know that I can particularly say that they concur in them; I might say that some of them have not raised any objection to them—at least, one of them.

X Q. 87. You cannot name any that have ever approved of the present rate, can you, that you are charging?

A. No; I do not know that any of them have ever had any occasion; that is not customary for any industry to approve any of our rates, unless some particular question or some particular rate should raise.

X Q. 88. I do not mean approve in the sense that the Railroad Commission would approve, because, necessarily, there is no authority in a shipper to approve any rate; but can you name any single oil mill in the City of New Orleans that has expressed its satisfaction in the rate that is now being charged for the transportation of cotton-seed by the Texas and Pacific Railway Company from points in Louisiana to New Orleans?

A. I do not know that I can; that is not a customary thing for any of them to do.

X Q. 89. You say that you do not know that you can?

A. No, sir; the hearing before the commission at these various sessions, there were times when they expressed satisfaction or were satisfied with the conditions. I think.

X Q. 90. Name some of them?

A. Well, I don't know that I could name any particular one; but that was the general sentiment expressed at that hearing  
142 I refer to, by the Railroad Commission, in fact. Order No. 406 or 457 said they seemed to be satisfied with the present condition, some such—

X Q. 91. I am asking you about New Orleans?

A. Excepting New Orleans.

X Q. 92. What I want to know is this: Do you know of any oil mill in the City of New Orleans or Gretna, that has ever expressed satisfaction with the rate for the transportation of cotton-seed into New Orleans from any points in the State of Louisiana, now charged by the Texas and Pacific Railway Company?

A. I would answer to that, no; that such a condition or such an expression from any industry is not usual nor would we expect it.

X Q. 93. I understood you to say, a moment ago, there were oil mills represented at the hearing before the Railroad Commission that were satisfied with the transportation charges of the Texas and Pacific Railway Company on cotton-seed. Is that correct?

A. In New Orleans, you mean?

X Q. 94. I asked you just a general question; I am not speaking now with reference—

A. I think that is correct.

X Q. 95. Now, were any of those New Orleans mills?

A. I cannot recall that they were; I do not think they did. There was one New Orleans mill that I believe has never been represented in any of these hearings, and I do not know what their feeling would be in the matter; that oil mill has interests both in the interior and in New Orleans or Gretna. I refer to the Union Oil Company.

X Q. 96. What proportion of the cotton-seed oil products from New Orleans cotton-seed oil mills is shipped abroad each year?

A. It would be impossible for me to give a definite answer to that. The oil mills of New Orleans receive and buy so much oil and other products from points in other states than Louisiana, in

fact, in all the surrounding states, that it would be impossible for me to tell what proportion of the products are exported by them.

X Q. 97. Is it not a fact that the entire product of the oil mills of New Orleans from cotton-seed is not shipped abroad?

A. Yes, sir; that is a fact.

X Q. 98. Don't you know it to be a fact that a certain proportion of the cotton-seed products from the New Orleans oil mills is shipped out over the various railroads, either in the form of fertilizers, lard products or otherwise?

143 A. Yes, sir.

X Q. 99. Does not the Texas and Pacific Railway Company get a proportion of that product?

A. Yes, sir; from some of them, at least; probably all.

X Q. 100. Is it not a fact that the Texas and Pacific Railway Company does not wish to haul cotton-seed to New Orleans?

A. No; I cannot say that. We do not raise any objection or make any discrimination in furnishing cars or in any other way prevent cotton-seed from coming to New Orleans oil mills.

X Q. 101. You said something a moment ago in your direct examination about the facilities the New Orleans mills have for storing the products from the cotton-seed crush which gave them an advantage over the local or country mills, enabling them to take advantage of ocean rates in the exporting of these products. Is there anything that would prevent the local or country mills from putting up warehouses of sufficient capacity to store their products?

A. Yes, sir.

X Q. 102. State what it is?

A. These oil mills here handle this export business as only an incidental part of their business. It is only in connection with their regular oil business, their refining business and it is not alone. To attempt to put up warehouses on the river front and have a wharf as these people do, particularly the oil mills in Gretna—possibly some others—to erect warehouses and have a wharf on which to handle this product by itself, and not in connection with their oil mill or refinery, and other special manufacturers would be too expensive a proposition; they could not afford it and all of them combined together. I doubt if all the interior mills were joined together, whether they could afford to do it; it would be too expensive for them to handle it in that way.

X Q. 103. Have they ever taken the matter up, the country mills?

A. I cannot say directly they have; that is, positively. There has been, I think, some such mill, but I could not answer that affirmatively.

By General MILLER:

X Q. 104. Are not the freights charged by vessels from this port to all European ports constantly quoted and fully known to the trade here and in the interior?

144 A. Well, I can only answer from my experience in the matter. We get inquiries by telegraph whenever the interior mills have shipments to offer. That, however, is not a fair test of

the rates that can be obtained. There are times when ocean vessels are in port partially loaded or nearly loaded, when, to complete their cargoes, they want from 100 to 200 or 300 or 500 tons of stuff. Under such conditions they go around to the different interests and particularly these cotton-seed product interests and offer to sell them this room at a reduced rate, and it is taken advantage of; and frequently, in fact as a rule, excepting possibly the very middle of the busy season of the year, it is taken advantage of and waited for by these New Orleans interests.

X Q. 105. Does the Texas and Pacific Railway Company issue through bills of lading from interior points on these products to foreign ports?

A. Yes, sir; when asked to do so.

X Q. 106. In such cases what free time is allowed to put the stuff in the car on through bills of lading?

A. On through bills of lading we either make a contract with the steamship line or we make the shipper who does make the contract with the steamship line, have confirmed in writing by the steamship agent, the contract with the railroad company; and before we will confirm this to the interior agent and others, or the issuance of through bills of lading, we make this steamship agent state what boat he will load this on, and when or the approximate date on which that boat will call for that product. If we find that to be an unreasonable time which would necessitate our holding it in cars or otherwise for an unreasonable time, we refuse to issue a through bill of lading. But when a through bill of lading is issued there is no question of free time, because then we agree to transport in connection with this steamship line to destination.

X Q. 107. There is no charge no matter how great the delay is, in such cases?

A. As I say, we provide against that delay before we issue the bill of lading.

X Q. 108. I understand you to say, of course—I am talking about a case where by accident or disappointment of any sort, the ship does not arrive or the room is not furnished, what free time is allowed?

A. As a rule if there is some unforeseen reason why that steamship line could not carry out its contract with us, we go to them and endeavor to transfer this stuff to some boat that will take it; that happens occasionally. If it happens we are absolutely unable to move it, we have to hold it.

145 X Q. 109. Without charge?

A. Of course, our through bill of lading is out on that and we are under obligations to ship it through.

X Q. 110. Is there any distinction in that respect between a shipment for export consigned to a local exporter and a through bill of lading?

A. There is this difference. On a shipment consigned on a local bill of lading for export it comes in consigned to some local concern or local buyer or shipper. We do not know what to do with that; we cannot dispose of it or unload it; we have to let it remain in the



cars; and he is allowed ten days free time in which to make disposal of it which I might add, is on an average, considerably greater than the delay to any shipment on a through bill of lading.

X Q. 111. How much greater is that average?

A. Our records show that it is from three to five days. In other words, the detention on shipments on through bills of lading, taking the season through, the business season and all, is about five days.

X Q. 112. That is in respect to both of them?

A. No, sir; on local bills it is about nine days.

X Q. 113. Is that the reason why the railroads justify that difference between charges on through bills of lading for use of cars and the charge to the local customer or the free time allowed, that they could handle their stuff with more expedition than if left to the local exporter?

A. It is because with the local exporter we have no control over the movement of the stuff, whereas on through bills of lading we have and we arrange for the movement of the stuff after arriving here, before issuing the through bills of lading, and we do then have control of the shipment, it is in our hands subject to disposal and if we cannot send it on one vessel we put it on another. We know what we can do, while with the local bill of lading that is left entirely to the local exporter.

X Q. 114. As a matter of fact, you look out for the interest of the interior shipper on these export shipments?

A. We do the best we can for them or for the local shippers for that matter. I have booked freight and issued through bills of lading for New Orleans exporters.

X Q. 115. All these interior shippers know that?

A. Yes, sir; they all know it.

Counsel for complainant and defendant- state that the case is closed so far as the taking of testimony is concerned.

the rates that can be obtained. There are times when ocean vessels are in port partially loaded or nearly loaded, when, to complete their cargoes, they want from 100 to 200 or 300 or 500 tons of stuff. Under such conditions they go around to the different interests and particularly these cotton-seed product interests and offer to sell them this room at a reduced rate, and it is taken advantage of; and frequently, in fact as a rule, excepting possibly the very middle of the busy season of the year, it is taken advantage of and waited for by these New Orleans interests.

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A. As I say, we provide against that delay before we issue the bill of lading.

X Q. 108. I understand you to say, of course—I am talking about a case where by accident or disappointment of any sort, the ship does not arrive or the room is not furnished, what free time is allowed?

A. As a rule if there is some unforeseen reason why that steamship line could not carry out its contract with us, we go to them and endeavor to transfer this stuff to some boat that will take it; that happens occasionally. If it happens we are absolutely unable to move it, we have to hold it.

145 X Q. 109. Without charge?

A. Of course, our through bill of lading is out on that and we are under obligations to ship it through.

X Q. 110. Is there any distinction in that respect between a shipment for export consigned to a local exporter and a through bill of lading?

A. There is this difference. On a shipment consigned on a local bill of lading for export it comes in consigned to some local concern or local buyer or shipper. We do not know what to do with that; we cannot dispose of it or unload it; we have to let it remain in the

cars; and he is allowed ten days free time in which to make disposal of it which I might add, is on an average, considerably greater than the delay to any shipment on a through bill of lading.

X Q. 111. How much greater is that average?

A. Our records show that it is from three to five days. In other words, the detention on shipments on through bills of lading, taking the season through, the business season and all, is about five days.

X Q. 112. That is in respect to both of them?

A. No, sir; on local bills it is about nine days.

X Q. 113. Is that the reason why the railroads justify that difference between charges on through bills of lading for use of cars and the charge to the local customer or the free time allowed, that they could handle their stuff with more expedition than if left to the local exporter?

A. It is because with the local exporter we have no control over the movement of the stuff, whereas on through bills of lading we have and we arrange for the movement of the stuff after arriving here, before issuing the through bills of lading, and we do then have control of the shipment, it is in our hands subject to disposal and if we cannot send it on one vessel we put it on another. We know what we can do, while with the local bill of lading that is left entirely to the local exporter.

X Q. 114. As a matter of fact, you look out for the interest of the interior shipper on these export shipments?

A. We do the best we can for them or for the local shippers for that matter. I have booked freight and issued through bills of lading for New Orleans exporters.

X Q. 115. All these interior shippers know that?

A. Yes, sir; they all know it.

Counsel for complainant and defendant state that the case is closed so far as the taking of testimony is concerned.

Filed March 7, 1908.

United States Circuit Court, Eastern District of Louisiana. In Equity.

No. 56. D. R. Division.

TEXAS & PACIFIC RAILWAY CO.

vs.

RAILROAD COMMISSION OF LOUISIANA et al.

Testimony Taken in the Above Numbered and Entitled Cause on Behalf of Defendants, on the 15th and 30th Days of April, 1907, and the 2nd and 22nd Days of May, 1907, before Hon. Solomon Wolff, Special Master Herein, at New Orleans, Louisiana.

Present:

Judge Walter Guion, Att'y Gen'l, State of Louisiana.  
Gen. T. M. Miller, Associate Counsel for Defendants.  
Judge T. J. Freeman, Solicitor for Complainant.  
William F. Braggins, Local Frt. Agt., Tex. & Pac. R. R.

W. M. BARROW, witness on behalf of defendants, sworn and examined, testified as follows:

Direct examination.

By Judge GUION:

Q. 1. What is your name?

A. W. M. Barrow.

Q. 2. What is your official capacity?

A. Secretary of the Railroad Commission of Louisiana.

Q. 3. What is the number of the order that is attacked in this case?

A. Order No. 484, adopted December 13, 1905, by the Railroad Commission of Louisiana.

Q. 4. Had the Railroad Commission ever adopted prior to that time any tariff rates on cotton-seed in this state?

A. I will have to qualify my answer to that; they had authorized to carry freights on cotton-seed in the State of Louisiana, but had not directed that any rates be put in by an order previous to the issuance of Order No. 484. I may say also that this applies only to the Texas and Pacific Company.

147 Q. 5. Do I understand from the question just propounded that the Texas and Pacific Railway Company had a tariff of rate- and charges already in prior to the creation of the Railroad Commission?

A. They had.



Q. 6. Did they submit it to the Railroad Commission?

A. Yes, sir; it was filed with the Railroad Commission.

Q. 7. At what time, do you remember?

A. The first tariff was filed with the Railroad Commission when the commission was first organized; that is, I cannot give you the date. It was about January, 1899, these tariffs were filed at this time, among them the tariff on cotton-seed; these tariffs were all afterwards embodied in one tariff and filed by the commission—by the railroad company with the commission, for which the commission gave the company an authority number.

Objection—Judge FREEMAN: I make an objection to that class of testimony; you, as well as myself, want those tariffs introduced in evidence.

Q. 8. Have you those tariffs?

A. Yes, sir; I have the L. C. No. 95 which is a reissue of the tariffs on cotton-seed in the State of Louisiana which had been issued previous to its date.

Q. 9. What is the L. C. 95 referred to in the testimony of Mr. Redfield when giving his answer to Cross-Interrogatory No. 2, propounded to him?

A. It is the Texas and Pacific Railway Company's local freight tariff applying on cotton-seed and cotton-seed products between stations on the Texas and Pacific Railway in Louisiana.

Q. 10. When was it effective?

A. It was made effective by the company, April 14, 1904; the company failed to get the commission's authority for this tariff until after their attention was called to it by me as secretary of the commission, so their authority was issued subsequent to the issuance of this tariff by the company.

Q. 11. Can you state the date when the authority of the commission was given?

A. By referring to my files I can—(witness refers to his files). The authority was issued May 25, 1904, under the commission's No. 2580.

Offer—Judge GUION: In connection with the testimony of  
148 the witness, defendants now offer and ask to have filed copy of authority No. 2580, marked D-1.

Q. 12. Now, on what was this authority of May 25th, based?

A. On an application signed by W. F. Braggins, division freight agent of the Texas and Pacific Railway Company, dated 5/19/04, asking the commission to authorize the rates named in Tariff L. C. No. 95, previously filed in connection with this testimony.

Offer—Judge GUION: In connection with the testimony of Mr. Barrow, I offer in evidence copy of the letter of Mr. Braggins, dated the 19th of May, 1904, concerning Tariff L. C. No. 95, marked D-2.

Q. 13. Do I understand you to state that L. C. No. 95 is the tariff of charges which was in effect prior to the organization of the Railroad Commission?

A. It was insofar as some rates are concerned; it carries also rates which were issued after the organization of the commission. It is a complete reissue of all rates in effect on April 14, 1904.

Q. 14. How is that with respect to rates on cotton-seed?

A. Before I answer that, do you mean whether they were the same rates?

Q. 15. Yes.

A. The rates on cotton-seed which are shown in L. C. No. 95 were in effect previous to the issuance of the tariff—

Q. 15. [16] What I want to ask you distinctly is this: Was the Tariff L. C. No. 95 adopted originally by the Railroad Commission as a tariff covering the transportation of cotton-seed in Louisiana or was L. C. No. 95 a tariff of the Texas and Pacific Railway Company submitted to the Railroad Commission?

A. It was a tariff of the Texas and Pacific Railway Company, submitted to the commission for their authority number.

Q. 17. When was this tariff that is now attacked adopted by the commission—just give me the date?

A. The Order No. 489 making the rates named in Order No. 484 effective February 1, 1906, was adopted by the commission, January 9, 1906.

Q. 18. Mr. Barrow, can you state the causes that led up to the tariff of charges on cotton-seed that the complainants in this case are not [now] attacking?

149 A. There had been complaints made to the commission about the rates on cotton-seed in general in the State of Louisiana, and also especially against the rates charged by Texas and Pacific Railway Company, which caused the commission to begin its investigation into the charges for the transportation of cotton-seed in the State of Louisiana, and which finally resulted in the adoption of Order No. 484 and Order No. 489, establishing rates on cotton-seed for the Texas and Pacific Railway Company in Louisiana.

Q. 19. Was there one, or were there more than one hearing on this subject before this order was finally adopted?

A. There were several hearings, and two hearings directly on the rates which were adopted in Order No. 484.

Q. 20. Where were these hearings held?

A. They were held in the office of the commission at Baton Rouge, Louisiana.

Q. 21. Have you those minute entries showing that?

A. Yes, sir. (Witness hands counsel certain minutes.) Those are all that refer especially to this Order No. 484.

Offer—Judge GUION: In connection with the testimony of the witness, solicitor for defendants now offers in evidence extracts from the minutes of the Railroad Commission of the following dates: December 19, 1904; December 12, 1905; January 8, 1906, and marked respectively D-3, D-4, D-5, D-6.

Q. 22. Then do I understand at these hearings the cotton seed

mill interests were represented and that the complainant company, the Texas and Pacific Railway Company, was also represented?

A. Yes, sir; they were.

Q. 23. The extracts from the minutes that I have just introduced and marked, as you have seen by the stenographer, are they correct extracts from the minutes of the Railroad Commission concerning what occurred at these several meetings?

A. They are.

Q. 24. Is there any complaint on the part of the different country mills that you are aware of concerning the rate that the Railroad Commission proposes to put in on cotton seed in this State?

A. None that I know of.

Q. 25. Do you know as a fact that any of the mills do acquiesce in the rate in the country?

150 A. I know as a fact that the representatives of the mills who appeared before the commission when Order No. 484 was under consideration, did acquiesce in the rates proposed.

Q. 26. Have you a comparative statement in your possession, made by yourself, showing the difference in the tariff on cotton seed in Louisiana transported by the railroads from points in that State as between the tariff that the defendants propose to put in and L. C. No. 95; I mean did you make a comparative statement of the different mileage rates; have you made any such statement as that?

A. I made a comparative statement between the rates charged on the Texas and Pacific Railway and those which have been made in other states—those that have been charged in other states.

Q. 27. You have not made any showing the difference between the tariff of charges in the old rate issued by the Texas and Pacific as compared with what will be the rate if this order is put into effect, have you?

A. I have a statement which shows a comparison between the rates which the commission seeks to establish in its Order 484 and the rates which are chartered by the Texas and Pacific Railway Company under their tariff L. C. No. 95. This statement also contains and shows the rates which have been established by the Railroad Commissions in the States of Texas, Arkansas, Georgia and Mississippi, and which are at this time in effect, and were in effect when the commission adopted its Order No. 484. I have complied [compiled] this statement from certified copies of the rates of the State Railroad Commissions, furnished by the secretaries of the commissions, and from the tariff of the Texas and Pacific Railway Company, L. C. No. 95, on file in the office of the commission at Baton Rouge, Louisiana.

Q. 28. You mean as compared with what the commission proposes to put into effect?

A. As compared to what the commission proposes to put in their Order No. 484.

Offer—Judge GUION: In connection with the testimony of the witness, defendants offer in evidence comparative statement just testified to, marked D-7.

Q. 29. Have you in your possession the tariffs of the various states referred to in this comparative statement, Texas, Arkansas, Georgia, Mississippi, or any others that you may have?

A. I have certified copies of such rates, furnished me by the secretaries of the Railroad Commissions of Texas, Arkansas, Georgia and Mississippi.

Offer—Judge GUION: In connection with the testimony of the witness solicitor for defendants offers in evidence the commodity tariff 3-a of the Railroad Commission of Texas, contained on page 98 of the 15th annual report of the Railroad Commission of that State, showing the mileage rate on cotton seed in the State of Texas, marked D-8.

Offer—Judge GUION: In connection with the testimony of Mr. Barrow, defendants' solicitor also offers in evidence the tariff charges for the transportation of cotton seed in earloads in the State of Mississippi, with the certificate of the secretary of the Railroad Commission of that State, which certificate also states that the rates as shown in his certified statement, have never been contested by any of the railroads operating in said State, marked D-9.

Offer—Judge GUION: In connection with the certificate of the secretary of the Railroad Commission of Mississippi, solicitor for defendants offers in evidence the 10th annual report of the Railroad Commission of Mississippi, from which the tariff, as certified to by the secretary of the Railroad Commission, is taken, restricting the offer merely to that part of the 10th annual report containing the tariff charges in Mississippi on cotton seed as certified to by the secretary of the Railroad Commission of that State, marked D-10.

Offer—Judge GUION: Solicitor for defendants also offers in evidence tariff of charges on cotton seed between points in the State of Georgia, with certificate of the secretary of the Railroad Commission of that State, dated September 22, 1906, certifying to said tariff, and also certifying that the same has been effective without contest on the part of any railroad operating in that State, marked D-11.

Offer—Judge GUION: Solicitor for defendants also offers in evidence page 5, taken from the standard freight distances, tariff No. 2, adopted by the Railroad Commission of the State of Arkansas, taking effect July 5, 1904, with certificate of the secretary of the Railroad Commission of that State, showing that the rates set out on page 5, as applying to the transportation of cotton seed in that State, were promulgated by the commission of 1900, and that they never have been contested by any railroad company operating in the State of Arkansas, marked D-12.

#### Agreement.

It is understood and agreed that these various tariffs on memoranda from the various tariffs from other states go in evidence just as if they had been formally proved up by the proper official having authority to prove them up, and are to have the same force



and effect as if the original tariffs were filed and exhibited, subject to any attack complainant may desire to make on same in the way of showing different conditions, or anything of that kind, or any legal objections.

Q. 30. Mr. Redfield, a witness for the complainant, has stated that the present tariff in effect on the Texas and Pacific Railway between points in Louisiana on cotton seed is in a measure out of proportion, as compared between long and short hauls rates elsewhere on the line, owing to the fact that the rates in Louisiana, as previously stated, are lower than between points on the Texas and Pacific Railway in Texas; have you made a comparison at all of the rates between points on the Texas and Pacific Railway as compared with Louisiana?

A. I have.

Q. 31. Well, from your examination of the tariffs, is that statement true?

A. I do not find that statement to be true; my examination of the tariff, as adopted by the Railroad Commission of the State of Texas, in their commodity tariff No. 3-a, as compared with the rate sought to be established by the Railroad Commission of Louisiana in its Order No. 484 shows that in some instances the rate sought to be fixed by the Railroad Commission of Louisiana in its Order No. 484, are higher than the rates which are charged in the State of Texas.

Q. 32. What is the result of your examination of the charges for the transportation of cotton seed between points in the several states of Mississippi, Arkansas and Georgia, as compared with the Louisiana rate that is now in effect and which the commission seeks to change by the order that is now attacked?

A. My examination shows that the rates as fixed by the Railroad Commission of the State of Arkansas are lower than the rates sought to be established by the Railroad Commission of Louisiana. This is also true of the rates fixed by Railroad Commission of Georgia, and the rates fixed by the Railroad Commission of Mississippi.

Q. 33. Mr. Redfield also states, in answer to a question propounded to him on cross-examination, that he had made no comparison of the rates of the states mentioned, viz., Arkansas, Mississippi, Tennessee, Alabama, Georgia, South Carolina and Florida, but that his general information is that in all of these states the rates at least give the carrier the right in every instance to haul out the manufactured product; do you know of any such rule that applies in any of the states mentioned?

A. I do not, and it is not stated in any of the railroad tariffs or orders of the Railroad Commissions which I examined.

Q. 34. Did you examine them from the various states carefully?

A. I have examined the tariffs and orders of the Railroad Commissions carefully.

Q. 35. Do you find in any instance where you have examined the tariffs of the states named that there is given a different rate where the carrier is afforded the carriage of the manufactured product

from any local point? In other words, what I mean is this: do you find that there is any rebate given in any case of the kind?

A. I have not found in any tariff which I have examined any provision for a higher rate to be charged when the carrier failed to receive a certain percentage of the manufactured product, except in the State of Louisiana.

Q. 36. Let us see what there is in the State of Louisiana that you refer to that differentiates from any other state whose tariff charges you have examined?

A. In the State of Louisiana?

Q. 37. Yes?

A. In the State of Louisiana the Texas and Pacific Railway Company is allowed to charge three cents per 100 pounds higher than the mileage rates named in the commission's order when they fail to receive 50% of the products of the seed hauled in, other than linters, hulls and ashes. This applies except on seed shipped into New Orleans or Gretna.

154 Q. 38. That language is contained in the tariff of charges of the Texas and Pacific Railway Company which was in force prior to the time this tariff was submitted to the Railroad Commission, as I understand it?

A. No, not that language. The three cents refund charge was first applied on the mileage rates into Shreveport; it was then extended to all mileage rates in the State on the Texas and Pacific Railway for the transportation of cotton seed in Louisiana.

Q. 39. Well, does the Railroad Commission of Louisiana undertake in any way to do away with this refund in the order which it proposes to put into operation?

A. In its Order No. 484 it undertakes to do away with the refund charge in the City of New Orleans and in Gretna.

Q. 40. Was there any discussion before the Railroad Commission at which the Texas and Pacific Railway Company, through any of its officers, was represented, concerning this refund prior to the adoption of the order which is now attacked?

A. Yes, sir; this is one of the points that was discussed when the hearing was held.

Q. 41. Was any objection made to the Railroad Commission's action at any time at which the complainant in this case had the opportunity of answering concerning this refund?

A. When these rates were propounded, the commission originally prepared the tariff and considered all of the features which might effect the rate, and then determined that the rate proposed in Order No. 484 was a reasonable rate in itself. The tariff which was finally adopted as Order No. 484, was proposed by the Long Bridge Cotton Oil Company and did not contain any refund features.

Q. 42. Examine this document marked D-4 and state whether that is an extract of the minutes of the Railroad Commission showing the application of the Long Bridge Cotton Oil Company for a change in rates?

(Solicitor hands witness the document referred to.)

A. This is a correct extract of the minutes made by me as secre-

tary of the commission, showing that the hearing was held in this case and showing who was present.

Q. 43. Then as I understand it the Long Bridge Cotton Oil Company, the New Roads Oil Mill, the Red River Oil Company, the Sinclair Cotton Seed Oil Company, the Capital City Oil Company, Mr. Smith, representing the Board of Trade, and Mr. Braggins, representing the Texas and Pacific Railway Company, were present at that hearing?

A. Yes, sir.

Q. 44. This extract from the minutes disclosed the fact that after discussing the rates proposed by the commission on cotton seed, a request was made by the representatives of the mills present that the commission adopt the rates proposed by Circular No. 118; what is Circular No. 118?

A. Circular No. 118 was a circular issued by the Railroad Commission proposing a scale of mileage rates to be adopted for all the railroads in the State of Louisiana.

Q. 45. What was the result of the request from these oil mills that the commission adopt the rates proposed in Circular No. 118?

A. This was a request that the commission adopt the rates proposed in Circular No. 118 by the Texas and Pacific Railway Company, and this resulted in the commission adopting the rates named in Circular No. 118 as the Order No. 484.

Q. 46. Then do I understand that the request that was made at this meeting, which was on December 12, 1905, coming from these various oil mills, was that the Railroad Commission adopt the tariff of charges which is now attacked by the Texas and Pacific Railway Company?

A. Yes, sir.

Q. 47. These oil mills are all in the country?

A. Not all; there are some New Orleans mills represented there.

Q. 48. Which is the New Orleans mill that is represented there?

A. Mr. J. M. Janin appeared before the commission representing all of the oil mills in the City of New Orleans; Mr. John E. Smith represented the Board of Trade of which the oil mills, or their officers, were members.

Q. 49. Was there any general discussion at this hearing?

A. There was.

Q. 50. Concerning the refund that is contained in the present charge, or present tariff charges?

A. There was a discussion on the whole subject and this matter of the refund was discussed. I could not say with how much detail.

Q. 51. As a matter of fact, was this refund of 3 cents per 100 pounds operating advantageously or disadvantageously to the oil mills in New Orleans and Gretna?

A. That would be a mere matter of opinion.

Q. 52. Did the commission have any opinion on the subject?

A. The commission eliminated the 3 cents refund clause from applying at New Orleans and Gretna, believing—

Q. 53. For what reason?

A. —that it was unreasonable; their belief was based on the opposition to this refund which was made by the representatives of the New Orleans oil mills. I may also add that the commission regarded that requirement at New Orleans as being impracticable because it was not possible for the oil mills to return the tonnage required by the railroad company in all instances.

Q. 54. Mr. Barrow, what is the difference in charges, if any, for the transportation of cotton seed in Louisiana, between points on the Illinois Central Railroad, including the Mississippi Valley Railroad, as compared with the charges that the Texas and Pacific Railway Company makes between like points?

A. The rates are very much lower.

Objection—Judge FREEMAN: If you are testifying from tariffs that are on file with the commission, I object to your conclusions unless you refer me to the tariffs.

A. I am testifying from my own knowledge of an order issued by the commission which indicates very much lower rates as will be shown by orders issued by the Railroad Commission of Louisiana.

Q. 55. How do the charges of the Texas and Pacific Railway Company on cotton seed between points in Louisiana compare with charges for the same commodity between points in that State to points on the Morgan's Louisiana and Texas?

A. The rates for the transportation of cotton seed on the Morgan's Louisiana and Texas, and the Louisiana Western Railroad, are not on the mileage basis, but for similar distances as compared with the mileage rates of the Texas and Pacific Railway Company, the rate on the M. L. & T., or on the Louisiana Western Railroad are lower. Rates for the transportation of cotton seed on the V. S. & P. Railroad, as will be shown by the orders of the Railroad Commission and printed in their 8th annual report, are lower for similar distances than those charged by the Texas and Pacific Railway Company, and they have no refund charges.

Q. 56. Where does the Vicksburg, Shreveport and Pacific road run from, and to what points in Louisiana?

A. From Shreveport to Delta Point, a distance of about 157 170 miles. The rates which are charged for the transportation of cotton seed by the St. Louis, Iron Mountain and Southern Railway Company, and the lines which it controls in the State of Louisiana, to the milling points on those lines, are lower than the rates which are charged by the Texas and Pacific Railway Company for similar distances.

Q. 57. Does the Texas and Pacific Railway run through a cotton producing territory?

A. A portion of its line does.

Q. 58. Are there many oil mills on its line?

A. I will give you the names of those which I know to be located on the line of the Texas and Pacific Railroad in Louisiana. There are two at Shreveport, two at Alexandria, one at Bunkie, one at New Roads, one at Batchelor, one at Cinclair, and, I believe, one at Torras and one at Long Bridge, and several at New Orleans.



Q. 59. I was referring particularly to mills outside of New Orleans and Gretna. Mr. Redfield stated, in reply to the question whether the joint rates on cotton seed charged by the Texas and Pacific Railway Company and its connections from points in Louisiana to New Orleans or Gretna was not higher than any joint cotton seed rate within his knowledge anywhere, and he answered no, that there are many cases where they are not higher; what have you to say about that?

A. I do not know of any case where the joint rates from points in Louisiana to New Orleans via the Texas and Pacific Railway are lower than the joint rates fixed in other states. I do not know whether that is responsive to your question.

Q. 60. Here is what he said; he was asked 'this question: "Is not the joint rate on cotton seed charged by your connections and your road from points in Louisiana to New Orleans or Gretna, higher than any joint cotton seed rate within your knowledge anywhere"? He answered: "No, there are many cases where they are not higher."

A. I think I said I did not know of any.

Judge GUION: I desire to make the formal statement before the Master that I will make a motion in writing before the Court to have General T. M. Miller take part in this case and join me as associate in it, and that he is now present for the purpose of hearing evidence and participating in the examination.

New Orleans, April 30th, 1907.

158 By Judge GUION:

Q. 61. Have you a comparative statement prepared by yourself, showing the comparative rates for the transportation of cotton seed in Louisiana by the various railroads operating in that State between points therein?

A. I have such a statement which I prepared from the tariffs on file in the office of the commission showing the mileage rates on the Illinois Central and Yazoo and Mississippi Valley railroads, the V. S. & P. Railway, the St. Louis, Arkansas and Gulf Railroad, the Louisiana and Arkansas Railway, the St. Louis, Iron Mountain and Southern Railway, the Chicago, Rock Island and Pacific Railway, the Texas and Pacific Railway main line, the Texas and Pacific [Pacific] Port Allen Branch. The statement also shows the [the] rate contained in the Order No. 484 contested in this case.

Offer—Judge GUION: In connection with the testimony of the witness, solicitor for defendants now offers and introduces in evidence a comparative statement prepared by him as testified to, marked D-14.

Q. 62. What is the rate on cotton seed to Cinclair, have you that before you?

A. I have before me here a statement to the tariff L. C. 95, showing the rates on cotton seed to Cinclair, from which I have prepared a statement showing the rates to Cinclair as compared with the rate

for similar distances to other oil mill points on the Texas and Pacific in Louisiana.

Q. 63. You have that separately?

A. Yes, sir.

Offer—Judge GUION: In connection with the testimony of the witness counsel for defendants offers in evidence, statement No. 8 to local freight tariff L. C. No. 95, showing the tariff charges for the transportation of cotton seed to Cinclair over the line of the Texas and Pacific Railroad, marked D-15.

Q. 64. The other document you hold in your hand, what is that?

A. This is a statement which I have checked with the original tariffs on file in the office of the commission showing the difference in the rate in favor of Cinclair as compared with the rates T59 for similar distances to other oil mills on the Texas and Pacific Railway in Louisiana.

Offer—Judge GUION: In connection with the testimony of the witness solicitor for defendants offers in evidence the comparison of freight rates just testified to, marked D-16.

Q. 65. Will you please produce, if you have it in your possession, a letter written to the Railroad Commission asking for a preferential rate in favor of Cinclair?

A. I can produce a copy of a letter.

Q. 66. Have you the original?

A. I have the original on file in the office. This is a copy of a letter signed by W. F. Braggins, division freight agent of the Texas and Pacific Railway Company, dated 9/3/04, addressed to me as secretary of the commission and asking for a tariff of rates from points on the Texas and Pacific Railway in Louisiana to Cinclair for the transportation of cotton seed on the Texas and Pacific Railway.

Offer—Judge GUION: In connection with the testimony of the witness solicitor for defendants offers in evidence a copy of the letter just referred to, marked D-17.

Q. 67. Now, I find a statement made in the copy of letter just referred to and offered, to the following effect: "The above rates are applied for on the ground that they are the same as those enjoyed by other oil mills on our line handling such business for similar distances." What have you to say about the correctness of that statement?

A. From the examination of the tariff of rates proposed in this letter and for which authority was issued, shows that that statement was not correct.

Q. 68. Was this letter the basis for the adoption by the commission of the Cinclair rates?

A. Yes, sir. Our authority was issued on the receipt of that letter in our usual way, for the rates named therein.

Q. 69. Have you examined the report made to the Railroad Commission, in compliance with the rules of that body, for the year ending June 30th, 1906?

A. Yes, sir.

Q. 70. Have you it before you?

160 A. I have the commission's annual report which contains statistical tables made up from the annual report of the various railroad companies to the commission.

Q. 71. Will you please turn to the report of the Texas and Pacific Railway's report made to the commission and state from an examination of it what the average receipts per ton per mile in Louisiana for the year ending June 30, 1906, are shown to be, over the line of the Texas and Pacific R. R.?

A. The average receipts per ton per mile of all freight carried by the Texas and Pacific Railway for the year ending June 30, 1906, in the State of Louisiana, was .01015 cents.

Q. 72. That would be one cent and one fifteen-thousandths of a cent?

A. Yes, sir.

Q. 73. I will ask you this question. There has been some evidence given, to the effect that the average distance of the haul of cotton seed in Louisiana, to the country or local mills, is 40 miles. This I understand to be the testimony of Mr. Redfield. Now, if he be correct in that respect and it be true that the average distance of the haul of cotton seed in Louisiana is 40 miles, what would be the revenue to the Texas and Pacific Railway Company, under the rate fixed by the commission?

A. Under the rates named in Order 484, using the average distance of 40 miles as a basis, the revenue to the company would be  $2\frac{1}{2}$  cents per ton per mile.

Q. 74. That is, under the order that the Railroad Commission proposes to put in?

A. Yes, sir.

Q. 75. And that is less than the present rate now prevailing over that line?

A. Yes, sir.

Q. 76. Does the tariff as proposed by the commission undertake to put into effect a universal mileage tariff?

A. Yes, sir; as far as the Texas and Pacific Railway is concerned.

Q. 77. Yes, sir. I should have said over that line?

A. Yes, sir.

Q. 78. Is not the rate on cotton seed hauled to Cinclair over the Texas and Pacific Railroad, lower on a mileage basis than to any other point on its line for similar distances?

A. There may be one or two special rates in effect on the Texas and Pacific Railway which are as low and possibly slightly lower for very short distances, than these rates to Cinclair; but,  
161 taken as a whole, the rates to Cinclair are lower than the rates for similar distances to any other oil mill point on the Texas and Pacific Railroad in Louisiana.

Q. 79. What are the points that you refer to as being those to which the rate is lower than to Cinclair?

A. There is a special rate in effect from Ulster Gin near Boyce to the Boyce Oil Mill on cotton seed, of 50 cents a ton. This is a

very short distance, I don't know what the distance is exactly, it is very close to Boyce, within a few miles.

By Judge FREEMAN:

Q. Those are what they call wagon haul rates?

A. Yes, sir; wagon competitive rates.

By Judge GUION:

Q. 80. What is the other one you found?

A. To Long Bridge, there is a rate of 4 cents per 100 pounds from Moreauville, Cotton Port and Mansura, all points within a few miles of Long Bridge, where the railroad rate would be effected [affected] by wagon competition. There is also a rate of 50 cents per ton from Meekers to Lecompte, and a rate of 50 cents a ton from Seip and Willow Glen to Alexandria, based on a minimum earload weight of 15 tons. These are also very short distances. There is also a rate of 15 cents per 100 pounds from what you call joint track stations where the Texas and Pacific comes in competition with the Morgan's Louisiana and Texas Railroad Company, the stations being Lecompte, Cheneyville, Lloyds, Meekers, Lamourie, Emfield, Moorland, Willow Glenn, Alexandria, and Seips Spur, to New Orleans. Those special rates are the only ones I know of that are lower or as low as the rates for similar distances to Cinclair.

By the MASTER:

Q. You could not give the distances?

A. I could not, off-hand. I could very easily furnish the distances. I am willing to state these are what are known as wagon competition rates, and all are within five miles.

Q. 81. In proposing to put in this Order 484, why did the commission leave out the refund as applicable to the New Orleans and Gretna mills that is now in?

A. It is not now in, as far as New Orleans is concerned. New Orleans is excepted from the 3-cent refund.

Q. 82. That is true. Why was it left out?

162 A. Because the commission was convinced that it was impossible for the mills to return 50% of the products at New Orleans, and therefore it meant that the New Orleans mills would have to pay the additional 3 cents without the hope of obtaining the refund.

Q. 83. At the time that the application was made to the commission for the adoption of what is now Order 484, I understand that there was opposition to any change being made not only on the part of the railroad company, the Texas and Pacific, but by others. Is that correct?

A. There was opposition to the rates as proposed by the Railroad Commission for the use of all rail lines in the State of Louisiana, when the original hearing was held on rates proposed by the commission in its circular No. 118 which contained the same rates as were afterwards adopted in the commission's Order 484.

Q. 84. Who were some of those that opposed any change?



A. This opposition came from representatives of oil mills on the St. Louis, Iron Mountain and Southern Railway, from planters living along Red River, and from representatives of some oil mills on the Texas and Pacific in Louisiana.

Q. 85. Was there any opposition on the part of any oil mill in New Orleans?

A. No; I think not.

Q. 86. Now, will you please tell me whether or not when the commission adopted the Order 484, that opposition continued on the part of the country oil mills and the planters or farmers?

A. The adoption of Order 484 I will have to explain in order to make my answer intelligent. The adoption of Order 484 was the result of a petition filed with the commission by the Long Bridge Cotton Oil Mill, asking that these mileage rates be adopted for the Texas and Pacific Railway alone. This being a matter of general interest to all oil mills and planters on the Texas and Pacific a general circular was issued by the commission and a general hearing held on these weights at Baton Rouge and at this hearing, both the New Orleans mills and the country mills were represented, and they acquiesced in the rates which were proposed by the commission and adopted as Order 484.

Q. 87. As a matter of fact, are there any of the local mills, country mills, now opposing the adoption of Order 484?

A. None that I have heard of.

163 Q. 88. Don't you know it to be a fact they are satisfied with the order being adopted?

A. I know that to be true of most of them. I have not conversed with all of them, but I have not heard of any opposition by them.

Q. 89. Has any protest been filed with the commission in behalf of any of the local mills or any of the planters or farmers interested in the planting of cotton, since the adoption of the order?

A. No, sir.

Q. 90. Mr. Barrow, how far into the interior does this tariff under which the railroad operates to Cinclair extend; I mean the Texas and Pacific?

A. You mean the distance?

Q. 91. Yes?

A. I do not know that I can give you the distance; I can give you the names of the stations and the distances can be ascertained. The rate extends as far as New Roads north on the Port Allen branch and it extends as far as Cheneyville north on the main line, and a station called Scotts, although I am not positive that that is the station on the T. & P. railroad. The rate extends south on the main line of the T. & P. as far as New Orleans and includes the Indian Village branch and the Napoleonville branch.

Q. 92. Is there anything more you desire to state in connection with your testimony?

A. I do not think of anything just now.

Offer—Judge GUION: In connection with the testimony of Mr. Barrow, solicitor for defendants offers in evidence letter from the

U. S. Department of Agriculture signed by Victor Metcalf, chief of bureau, showing that the bulletin No. 16 already referred to in the evidence is the latest bulletin on the subject of the cost of cotton production, marked D-18.

Q. 93. Have you examined the reports made to the railroad commission by the complainant for the years 1904-05-06?

A. I have.

Q. 94. Have you made any extracts from these annual reports for the years ending June 30th of each of these years '04, '05 and '06?

A. I have.

Q. 95. Please examine that statement and see if that is correct as made by you from the reports of the complainant for the years referred to?

A. This is a correct statement as checked by me from the annual reports of the Texas and Pacific Railway Company to the Railroad Commission of Louisiana for the years ending June 30th, 1904, 1905 and 1906.

Q. 96. Did you compare it with their reports?

A. Yes, sir.

Q. 97. And found this statement to be correct as compares with the several reports made?

A. This is a correct statement.

Offer—Judge GUION: In connection with the testimony of the witness, solicitor for defendants, offers in evidence the extracts from the annual reports of the Texas and Pacific Railway Company made to the Railroad Commission for the years ending June 30th, 1904, 1905 and 1906, marked D-19.

#### Cross-examination.

By Judge FREEMAN:

X Q. 1. It is fixed rule of rate making with the commission, to make the short distance rates higher than the long distance rates in proportion to the mileage, is it not?

A. I cannot say that the commission has any fixed rule for making rates.

X Q. 2. Well, is it not a general rule of rate making adopted both by the commission and railroads, for your observation and examination.

A. You are speaking with reference to mileage rates?

X Q. 3. Yes, mileage rate; that is, your rate does not increase in proportion to actual mileage?

A. The rate increases in proportion to mileage, yes; but not uniformly.

X Q. 4. Now, for instance, say a rate for 20 miles was 5 cents, your rate for 100 miles would not be 25 cents, you would not increase in that proportion, would you?

A. Why, I could not say that the commission has any fixed rule for definitely saying what the increase should be, but the commission has a rule that requires there shall be a change in the rates as the

mileage increases; that is a rule of the commission, but it does not attempt to say what that change shall be.

165 X Q. 5. That is, it does not increase in the same ratio as the mileage increases?

A. Oh, no; it does not increase in the same ratio as the mileage increases.

X Q. 6. In other words, the short distance rates, as a rule, are always higher than long distance rates in proportion to mileage?

A. Yes, sir; comparatively speaking.

X Q. 7. Is it not a fact also that the rate per ton per mile decreases as the mileage haul increases?

A. That is true.

X Q. 8. Then, according to your calculation there as to the rate per ton per mile, they would receive on a 40-mile haul, if that had been a 200-mile haul what would the rate per ton per mile be?

A. I have got that figured out.

X Q. 9. I mean under the commission's proposed tariff.

A. Based on the commission's Order 484, the rate per ton per mile on a 200-mile haul would be  $1\frac{1}{2}$  cents.

X Q. 10. On cotton seed?

A. On cotton seed.

X Q. 11. What would it be at 150 miles?

A.  $1\frac{1}{4}$  cents.

X Q. 12. What would it be at 100 miles?

A.  $1\frac{7}{10}$ .

X Q. 13. At the time that the commission reduced the rate on cotton seed they made a very radical reduction also in the product rate?

A. Yes, sir. They maintained the parity which they found to exist previously between the rates on cotton seed and cotton seed products.

X Q. 14. Was not the purpose of reducing the rate on the product to satisfy the interior mills, and offset the disadvantage they would have to labor under on account of the reduction of the long distance seed rate to New Orleans?

A. The commissioner considered these proposition together, and the intimate relation between cotton seed and cotton seed products caused them to make this reduction of the rate on cotton seed products as well as the reduction of rates on cotton seed.

X Q. 15. Do you know whether the New Orleans mills were advocating a reduction on the product from the interior?

A. I do not think the New Orleans mills advocated or cared much about the rate on the product or had much to say about it.

166 X Q. 16. They were interested in the reduction of the seed rate alone?

A. Principally in the seed rate.

X Q. 17. And the reduction in the product rate was to give the interior mill practically the same advantage on a shipment of product that it enjoyed before reducing the seed rate, independent of the New Orleans mill?

A. It was to keep the mills on a parity, that is, to give neither

mill an advantage, but to overcome what the commission considered was a natural advantage on the part of the New Orleans mills being located at a point of export or primary market.

X Q. 18. Did the commission consider that the New Orleans mills had a natural advantage on account of being situated at a port?

A. As far as the product was concerned.

X Q. 19. And did they consider they were at a disadvantage as far as the seed rate was concerned?

A. Yes, sir.

X Q. 20. So they equalized that disadvantage by a reduction in the seed rate?

A. Yes, sir; and in the product rate.

X Q. 21. And having reduced the seed rate—

A. If they had left it at that it would have given the New Orleans mills an advantage over the interior mills, left the product rate as it was and reduced the seed rate the New Orleans mills would have had an advantage over the interior mills.

X Q. 22. In order to meet that situation they reduced the product rate from the interior mills?

A. Yes, sir.

X Q. 23. Now all of this reduction then comes out of the railroad company?

A. Oh, yes; in the reduction of freight rates they will be the sufferer from it.

X Q. 24. Then the equalization of the New Orleans mills with the interior mills, is paid for by the railroad out of the rate; that was the purpose?

A. If the mills of New Orleans buy enough cotton seed from the territory that the commission expects they will buy in, the railroad company will not lose any revenue, because there will be more cotton seed to be hauled on the long haul and therefore a higher rate will be paid to the company.

X Q. 25. But would you not have less product to be hauled on the long haul from the interior mills under that schedule?

167 A. The commission does not believe the interior mills will do any less business than they do now.

X Q. 26. Would they not do less business if they had less seed?

A. Yes, sir.

X Q. 27. Would they not have less seed if New Orleans bought it from their territory?

A. In my opinion, formed largely upon what I have heard mill men in New Orleans say, I do not think there will be any less seed for the country mills.

X Q. 28. If the interior mills cannot now consume the seed in their territory, why the necessity of reducing the rate so that the New Orleans mills can come in their [there] and get the surplus seed?

A. It is not my opinion that the country mills consume all that seed of the country. I believe the commission's rate will create a competition between New Orleans cotton seed buyers and country mill buyers which will cause planters to sell seed which they now use for fertilizer and other purposes on their plantations.



By Judge GUION:

Q. You mean seed hauled in by wagons?

A. No, seed which they do not haul at all and which——

Q. But which they would haul by wagons?

A. Yes, sir.

By Judge FREEMAN:

X Q. 29. Do you know whether or not the country mills run the entire season?

A. No oil mill, that I know of, runs the entire season.

X Q. 30. Either in the city or country?

A. Not crushing seed.

X Q. 31. Is that because they cannot get the seed?

A. It is because the seed has got to be worked up while fresh, they cannot keep the seed. It is an absolute physical impossibility to preserve cotton seed beyond a certain time and it has got to be worked up quickly, and that is the cause of the mills not running the entire season.

X Q. 32. If it has to be worked up quickly, could not that condition of affairs be brought around better by having cotton seed mills located near the producing territory rather than have the seed concentrated at long distance mills?

A. Well, that might have some advantages, but I do not think that is a reason why the mills which were established before 168 the interior mills were established, at more distant points, should be eliminated from the cotton seed industry, buying cotton seed.

X Q. 33. At the time the mills were located in New Orleans, the practice of having the mills in the producing territory was not in vogue. Is not that a fact?

A. That is true about some, but not all the mills.

X Q. 34. Is it not true about the Texas and Pacific territory especially?

A. It is true about those mills which are located at strictly country points, but not Shreveport and Alexandria where there have been mills for some years.

X Q. 35. Well, Shreveport is at the extreme north end of the State and Alexandria is about the center from New Orleans?

A. Yes, sir.

X Q. 36. Mr. Barrow, do you know the location of the various interior mills on the main line of the Texas and Pacific and branch lines?

A. Yes, sir.

X Q. 37. Can you state that from memory. I have a list of them?

A. Yes, sir; I could, but I attempted to do that the other day and I left out one. It is shown in this tariff. I can state it by reference to this memorandum if you want it in this testimony?

X Q. 38. Yes, you might do it then?

A. The oil mills on the Texas and Pacific Railway are located, one

at New Roads, one at Batchelor, one at Torras, two at Alexandria, one at Bunkie, one at Long Bridge, one at Cinclair, two at Shreveport, one at Lake End, one at Boyce and one at Natchitoches.

X Q. 39. Except the Shreveport and Alexandria mills, the others have been constructed within the last ten years, have they not?

A. I could not say positively as to when they were constructed.

X Q. 40. They were constructed subsequent to the construction of the mills at New Orleans, were they not?

A. Subsequent to the construction of some of the mills at New Orleans, but I do not think all.

X Q. 41. In the tariff that you introduced on cotton seed from local points in Arkansas, does that tariff also include the tariff on the product?

A. Yes, sir.

169 X Q. 42. How does the tariff on the product from those Arkansas points to New Orleans, for instance, compare with the Louisiana commission's tariff on the product from Louisiana points to New Orleans?

A. You do not mean points in Arkansas to New Orleans?

X Q. 43. Yes.

A. This tariff does not show that.

X Q. 44. That is only a local tariff?

A. Yes, sir. It only shows the rates in the State of Arkansas as fixed by the Arkansas Railroad Commission.

X Q. 45. There is no port of export in Arkansas?

A. No, sir.

X Q. 46. All of that stuff either moves to the port of New Orleans for export or Norfolk, Savannah, Brunswick, or the extreme Atlantic seaboard?

A. All that is exported.

Redirect examination.

By Judge GUION:

R. D. Q. 1. You have spoken of mills having been built in recent years along the line of the Texas and Pacific Railroad in this State. Do you know of any other cotton seed mills having been built in Louisiana along the line of other railroads in the State?

A. Yes, sir; there have been mills built all over the State of Louisiana in the last six or seven years.

R. D. Q. 2. Can you recall any built, or do you remember any built along the line of the Yazoo and Mississippi Valley Railroad, for instance?

A. I think the mill at Clinton was built within the last year. It has been built since the commission was established, that was in the last eight years.

R. D. Q. 3. When was the mill at Baton Rouge built?

A. That is an old mill, but it was re-built just a little over a year ago after the old mill was burned, the mill was burnt and a new modern mill was put up at Baton Rouge.

R. D. Q. 5. That is on the Y. M. & V.?

A. Yes, sir.

R. D. Q. 6. Those mills are being operated now?

A. Yes, sir. They have been operated during the past season, all of them.

R. D. Q. 7. Where do they get their seed, do you know?

A. No, sir.

170 Offer—Judge GUION: I would like to offer in evidence that part of rule 3 adopted by the Railroad Commission of Louisiana, in respect to free time on cars containing export freight, which reads as follows:

"On all cars containing export freight, 10 days free of charge will be allowed."

R. D. Q. 8. What is the meaning of that?

A. It means that on all export freight passing through the port of New Orleans, there is an exception made from the demurrage rules in favor of export freights, allowing them to remain in the cars for ten days without having any charges assessed against them.

R. D. Q. 9. Has that rule been observed here at New Orleans?

A. It is, so far as I know.

R. D. Q. 10. In other words, the car after it reaches New Orleans is used as a warehouse for ten days, a car of export freight?

A. Yes, sir; without charge.

R. D. Q. 11. What is the rate on cotton seed per ton to New Orleans from Norwood, Mississippi, Gayden, Brown and Clinton, Louisiana?

A. The rate is \$2 per ton from these points to New Orleans by the Y. M. & V. railroad. I can state that the State line is 171 miles from New Orleans on the Y. M. & V. and that this rate applies from any point between the State line and Gayden, to New Orleans.

#### Recross-examination.

By Judge FREEMAN:

R. X Q. 1. All the points you name are practically points in which river competition enters as a factor in the rate making?

A. None of those points that I have named are points where there is river competition or any possibility of river competition.

R. X Q. 2. At what distance are those points from the river?

A. From 15 to 20 miles from the river, and impassable streams are between them and the river.

R. X Q. 3. No wagon haul that could effect [affect] that rate at all?

A. Not to New Orleans, no, sir; that is the rate to New Orleans. You mean to the river?

171 R. X Q. 4. Yes?

A. No, I know from personal knowledge of the country there is no seed shipped from that territory by boat and has not been ever since the commission has been organized in the last 8 years. I will state also, that my familiarity with these rates is due to the fact that the commission investigated these particular rates — in by

order of the commission. The commission put in a lower rate but these rates were put in by a compromise of the suit.

R. X Q. 5. In other words, the rates you have testified about were put in by the commission?

A. Yes, sir; and accepted by the railroad company.

R. X Q. 6. Have you got any memorandum or date showing the earnings per ton per mile of the Y. M. & V. railroad?

A. Yes, sir.

R. X Q. 7. And the Illinois Central Railroad?

A. Yes, sir. The average receipts per ton per mile on the Y. M. & V. for the year ending June 30th, 1906, was .00948, and on the Illinois Central railroad for the same period, the average receipts per ton per mile was .00601.

R. X Q. 8. Are those reports confined strictly to the movement of state freight or interstate freight? That includes the operation of interstate traffic that moves over those lines, does it not?

A. It includes strictly local business and a percentage of interstate business.

R. X Q. 9. Do you know, as a fact, that a large portion of the traffic that passes over the Louisiana end of the Texas and Pacific comes from Texas, originates in Texas, and is brought to New Orleans for the reason this is our only gulf port?

A. Well, a portion of it, but I am not prepared to say that the larger portion of it does.

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NEW ORLEANS, LA., April 15th, 1907.

J. C. HAMILTON, witness, sworn and examined on behalf of defendants, testified as follows:

Direct examination.

By Judge GUION:

Q. 1. What is your name?

A. J. C. Hamilton.

Q. 2. Where do you reside?

A. In Baton Rouge, La.

Q. 3. Age?

A. 44.

Q. 4. What is your business?

A. Manufacturer of cotton seed products; with the Capital City Oil Mill.

Q. 5. Located where?

A. In Baton Rouge; and I am also manager of the Raccourci Cotton Oil Company in Pointe Coupee, and the president of Tensas Cotton Seed Oil and Manufacturing Company at St. Joseph, Louisiana, Tensas Parish.

Q. 6. Are you not also president of the Cotton Seed Crushers' Association?

A. Of the Louisiana Cotton Seed Crushers' Association.

Q. 7. From your connection with the mills that you have just named, and as president of the Louisiana Cotton Seed Crushers' As-



sociation, you understand, I take it, the conditions concerning the cotton seed industry in this State?

A. To a certain extent, yes.

Q. 8. Will you please state whether or not you were ever present at any meeting of the Railroad Commission for the purpose of asking that the tariff covering the transportation of cotton seed over the Texas and Pacific Railway Company in this State be changed?

A. I have been present at such meetings of the Railroad Commission; yes, sir.

Q. 9. Did you state your reasons to the Railroad Commission why, in your opinion, the tariff in existence should be changed?

A. I think I did.

Q. 10. Do you remember whether those statements were made in the presence of any one representing the Texas and Pacific Railway Company?

A. I think those statements were made in the presence of Mr. Braggins.

Q. 11. What Mr. Braggins do you refer to?

178 A. W. F. Braggins, division freight agent of the Texas and Pacific Railroad in Louisiana.

Q. 12. What reasons did you give to the commission at the time referred to for desiring or suggesting that a change be made in the tariff of charges then in existence?

A. At the time I was before the commission, the Texas and Pacific Railway Company had a whole lot of special rates in, and there were special rates in existence today that are not fair among the mills on a mileage basis under local conditions.

Q. 13. What mills do you refer to?

A. I refer particularly to a special mileage tariff to Cinclair.

Q. 14. Where is Cinclair?

A. In West Baton Rouge Parish.

Q. 15. Your object them [then], as I understand it, was to complain and ask for some change in special tariffs?

A. There were other special tariffs there that the commission finally took out.

Q. 16. Did you have anything to say concerning the tariff that the Railroad Commission proposed to put in and now proposes to put in?

A. I think the first time that came up I was present and thought that tariff was much lower than I thought the tariff was fair between the country and city mills.

Q. 17. You were interested in those mills you speak of in West Baton Rouge Parish, and what other place?

A. Point Coupee.

Q. 18. Do I understand then that you are satisfied, as interested in these country mills, with the tariff that the commission proposes to put in?

A. I am; yes, sir.

Q. 19. The reason I ask you these questions is that one witness has testified in this case for the complainant that the tariff charges, if adopted and carried into effect as proposed by the commission,

would operate disadvantageously to the country oil mills; is that true, in your opinion?

A. I have gone over those tariffs with Mr. Barrow, and I do not believe it will be against them so that their other advantages will not counterbalance it. Of course it will be against the present conditions as now existing, but the present rates give the mills in the interior a larger advantage over the city.

Q. 20. What would be the case in respect to that matter, 174 should the commission's rate, as they propose, be put into effect?

A. If they make a universal mileage tariff, I think it will put the mills all on a same parity.

Q. 21. You believe then a universal rate will put the city mills on a parity with the country mills?

A. Yes, sir; which would give them some advantage.

Q. 22. What mills?

A. The city mills.

Q. 23. As it is now, is there any advantage in favor of any of the mills over others?

A. On the long haul I think the country mills have the advantage; Cinclair has a preferential on mileage over Alexandria, or other local mills.

Q. 24. What is the rate for cotton seed to Cinclair; do you remember?

A. Take Morrow Station, on the Texas and Pacific, on an [a] mileage tariff it is less than Cinclair; it is less than to Cinclair than it is to Alexandria, and I see no reason why it should be.

Q. 25. Is Cinclair a competitive point?

A. Yes, sir; it has a mill on their line.

Q. 26. Is there any other line of railroad reaching Cinclair?

A. There is not.

Q. 27. What element of competition is there that would entitle Cinclair to have a lower rate on cotton seed than any other point along the line?

A. I see no reason why they should have any preferential rates over any other point.

Q. 28. Do you know how and when the Cinclair rate was put in?

A. I do not.

By General MILLER:

Q. 29. I understand that your idea is that the rates as they exist—the railroad company's rates—are somewhat in favor of the country mills?

A. Yes, sir.

Q. 30. And that the rates as proposed by the Railroad Commission will equalize matters, and possibly a bit in favor of the city mills?

A. Yes, sir.

By Judge GUYON:

Q. 31. Is that advantage which would be given to the city 175 mills over the country mills, should the proposed change in rates be put into effect, be an advantage—an actual advantage—by reason of the distance for the haul of cotton seed?

Judge FREEMAN: I do not quite object to that class of questions, but I would like the witness—

Q. 32. What is the advantage that would be gained by the city mills should the rate as proposed by the commission be put in?

A. It would enable them to buy seed in a district where they now cannot buy them because the rate is too high, and the country mills have a natural advantage, have the seed close to them on account of their frequent intercourse with the people, which will give them the preference over the terminal mills; in other words, I think that at even prices the mills close to the seed will always get the majority of the tonnage.

Q. 33. They would get it anyway?

A. They would get it anyway unless there be a big difference in prices.

Q. 34. Have the country mills any natural advantage over the city mills in respect to the seed being hauled to them?

A. They have what they call their wagon seed on which they pay no freight for them, or they give the wagons a part of the freight they would pay the railroad company; they are supposed to buy cheaper seed in the total cost than in a city mill by rail.

Q. 35. Does that difference exist throughout the State, the hauling into the mills of seed by wagon?

A. At nearly every mill.

Q. 36. You mean except at New Orleans?

A. Except New Orleans, which has no local seed.

Q. 37. Were there any other of the country oil mills represented at the hearing of the Railroad Commission concerning this proposed change in the tariff of rates besides the ones you represented?

A. Yes, sir; there were a number of mills represented at some of the earlier meetings.

Q. 38. Can you state whether or not—I am speaking of mills on the Texas and Pacific Railway—

A. Well, I am talking about the Texas and Pacific—

Q. 39. Can you state whether or not there was any expression of opinion by any of the other mills as to their being 176 satisfied in the proposed change in the tariff of charges?

A. My recollection is that B. M. Brown, at Alexandria, was perfectly willing for the rates on seed to be changed if they made corresponding changes in the rates on the product; in other words, he did not want the rates on seed reduced unless they reduced the rates on the products correspondingly.

Q. 40. Was that done?

A. I think it was.

Q. 41. Do you know of any other complaint being urged against the adoption of this tariff of charges by any of the country mills along the Texas and Pacific Railway?

A. The principal objectors I have heard now are people who are enjoying quite an advantage by the difference in rates, and they do not want them changed.

Q. 42. Who are they?

A. Cincinair does not want them changed, but the other two par-

ticularly are up on the M. H. & L. road, not on the Texas and Pacific Railway.

Q. 43. I am speaking of the mills on the Texas and Pacific Railway?

A. I think the principal complaint is from the city mills; the country mills are willing to let the rates alone, but they all want the preferential rates to Cinclair taken out, or any preferential rates; the idea is to do away with specials and put them all on a mileage basis.

Q. 44. At the time the Long Bridge Oil Company, or Oil Mill, appeared before the commission asking for the adoption of the rates that the commission proposes to put in, were you not present at that time?

A. I am not sure whether I was or not.

Q. 45. Well, what is the preferential rate in favor of Cinclair; what is the advantage given to Cinclair that you speak of?

A. On a mileage basis their rate is lower.

Q. 46. Lower than any other rates on the Texas and Pacific Railway?

A. I do not know about any other rates on the Texas and Pacific Railway.

Q. 47. I am speaking of similar distances?

A. It is lower for similar distances, as I understand it; I have not seen the tariff lately. My attention has been called to the fact that the seed rates to Cinclair, in comparison with Alexandria, are in favor of Cinclair.

Q. 48. Where is Cinclair located?

177 A. In West Baton Rouge Parish?

Q. 49. Whereabouts in West Baton Rouge Parish?

A. About three miles from Baton Rouge Junction, towards Port Allen, or what they call the New Roads Branch.

Q. 50. How far is it from the Mississippi River?

A. About  $\frac{3}{4}$  of a mile; their railroad tracks run up to the levee. It is not over 500 feet from there when it is low water.

Q. 51. The tracks of the Texas and Pacific Railway Company?

A. The Texas and Pacific Railway tracks, I expect, owned by the Cinclair plantation; I do not know who owns the tracks, but they are there.

By General MILLER:

Q. 52. Do you know what reason this railroad company gave for putting on a preferential rate in favor of Cinclair, or the mill at Cinclair?

A. I do not know.

Q. 53. Where does Cinclair get the bulk of its seed from?

A. Over the Texas and Pacific Railway.

Q. 54. Suppose the claim of the railroad is that they are forced to put on that rate in favor of Cinclair in order to get any haul to that point for the reason that otherwise the Cinclair mills would not patronize the railroad, but would get their seed by water?

A. They certainly do not make that claim sincerely.

Q. 55. What if they do make it?

A. They would not lose any patronage.



Q. 56. Why not?

A. Because the mileage rates paid by everybody else, by their mills on that line, are cheaper than Cinclair can get seed by water.

Q. 57. If seed are brought down to the landing for the Cinclair mill on the river, would it be necessary to haul the seed in wagons from the steamboat to the mill?

A. Yes, sir; unless they put in an electric conveyor, which they say they would do, but which will cost a great deal of money.

Q. 58. They have nothing of that sort now?

A. No, sir; they have not.

Q. 59. Do you know what the differential is in favor of Cinclair over the other mills for similar distances?

A. I do not know; the tariffs will show. There was another rate in that was all out of line; that was between Bunkie and New Roads, which, when we made complaint about it and showed  
178 that the necessity which put that rate in no longer existed, the railroad company was perfectly willing, and the commission took that special rate out.

Q. 60. That is the Bunkie mills?

A. It was a special rate on seed for points between New Roads and Bunkie.

Q. 61. If this distance rate which you speak of as giving a preference to the Cinclair mill was prevailing to New Orleans, do you know what effect that would have on the existing rate in force by the Texas and Pacific Railway Company?

A. I do not understand that question.

Q. 62. I say, if the distance rate prevailing for the benefit of the Cinclair mill, of which you speak, was applied to shipments of seed to New Orleans, do you know whether it would have a substantial effect on the rate to New Orleans?

A. I cannot answer that question.

Q. 63. That is so much per ton per mile, is it not?

A. I think it is a very cheap rate from New Orleans to Baton Rouge Junction.

Judge FREEMAN: That same rate is prolonged?

WITNESS: In competition with water.

Q. 64. How far into the interior does this tariff under which the railroad operates to Cinclair, extend?

A. I do not know, you will have to look at the tariff; far enough to give Cinclair, on a mileage basis, an advantage over the Alexandria mill, and I think over Long Bridge, but I am not certain about Bunkie.

Q. 65. Do you know what the difference is in favor of Cinclair on those points?

A. No, sir.

Q. 66. Can you approximate it?

A. No, it will have to be figured by the tariffs.

Q. 67. Is it a substantial difference?

A. When it gets to about 60 miles I think it is.

Q. 68. How long have you been in the cotton seed business in connection with cotton seed mills in this State?

A. 24 years.

Q. 69. Are you pretty familiar with the conditions of the interior oil mills in Louisiana?

A. Fairly well.

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Q. 70. And along the Texas and Pacific railroad?

A. I think so.

Q. 71. Can you state about what average proportion of the seed they consume which they receive by wagons in their own territory?

A. It varies so much any statement off-hand would be a guess.

Q. 72. What, substantially?

A. It would vary from 15% to 33½%.

Q. 73. Do you know whether or not some get even a larger proportion than 33% by wagons?

A. Some do.

Q. 74. Do you know whether or not it has been the policy of the Texas and Pacific railroad, in changing its tariffs, to compel the manufacture of seed in the interior, and interior mills, so as to get the hauling of the product out?

A. It looks like the tariffs have been made to control the product out of the seed they haul in.

Q. 75. Do you know whether or not, when this question has been up before the State Railroad Commission and where the rate on the products was not under consideration, the interior mills, almost to a unit, favored the maintenance of the then existing tariff on the ground that they could not afford to meet the seaboard or city mills in competition in the same territory.

A. I cannot state that positively, their interests being directly opposite; the statements made by people at each end of the line are very marvelous.

Q. 76. Did you hear a great deal of discussion before the board on the part of the advocates of the reduction to New Orleans and the representatives of the interior mills and the railroads in which it was claimed on the part of the New Orleans mills that the rate in itself, and as compared with the rates elsewhere in force, were excessive, and it was contended on the part of the railroad and the interior mills that it was necessary in order to maintain what they called a parity between the city mills and the interior mills, based on the transportation and sale of the products?

A. The whole contention, as I understand it, is that the city mills want the rate on seed lowered; the country mills do not want the rate on seed lowered unless they lower the rate on products proportionately.

Q. 77. And that is due entirely to the fact, is it not, that the products of the mill at the seaboard can be handled to markets at so much less than from the interior mills?

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A. It is admitted by the Alexandria mills, for instance, that the seed are worth \$1 more in New Orleans, at a mill, than they are at the Alexandria mills. I think they are worth \$1.50 more under normal conditions.

By Judge FREEMAN:

Q. 78. You mean per ton?

A. Per ton.

By General MILLER:

Q. 79. That is on account of the market facilities of the seaboard mills?

A. The products are worth more in New Orleans than they are at any interior point.

Q. 80. That is due entirely to the freight rate?

A. Most products come to New Orleans, or some terminal point, and the proportion sold locally is small.

Q. 81. Well, are you able to say whether or not this difference in favor of the interior mills has been maintained for the purpose of compelling the manufacture of seed at those places?

A. I think it is clearly to the interest of the railroad to build up the interior mills as far as they can, because it tends to build the towns and make more freights.

Q. 8. You have never calculated what proportion of the products of the manufactured seed the railroad gets from the mills, have you?

A. No, sir; the proportion is small.

Q. 83. Are you familiar with the cotton seed territory generally in the southern territory? Have you made a study of that subject?

A. I have not, only casually.

Q. 84. Do you know what the rates are to New Orleans by the railroads that run into Mississippi? The Illinois Central, the Mississippi Valley, and the New Orleans and Northeastern?

A. Yes, sir; I know those tariffs.

Q. 85. Do you know what the average difference is between those rates on these three last named roads and the Texas and Pacific, from points where there is a substantial movement to New Orleans?

A. I have made comparisons.

Q. 86. What is the distance from New Orleans to points on the average distance, say—to points on the Texas and Pacific  
181 Railway, from which the bulk of the movement, if there were such a movement, to New Orleans—the average distance?

A. There are but few seed within 110 miles of New Orleans, and from that to 160 miles, I should say.

Q. 87. There is a good cotton seed territory between Bunkie and Shreveport, is there not?

A. Between Bunkie and Boyce.

Q. 88. Boyce? Is that a short distance above Alexandria?

A. Yes, sir; you say from Bunkie to Cypress, it is a good seed territory.

Q. 89. What is the distance between Bunkie and Cypress?

A. I do not know.

Q. 90. Do you know what the average tariff is on cotton seed from that section to New Orleans, under the railroad's own tariff?

A. No, I do not.

Q. 91. Do you know whether it is as much as \$3 or \$4 a ton?

A. I think after it gets—I will have to refresh my memory from the tariffs. They get \$3.

Q. 92. At about what distance would the New Orleans mills begin to get seed on the Texas and Pacific Railway?

A. At least 110 miles before they get much seed; then from that to 200 miles. They would market their seed from 110 to 200.

Q. 93. And this 110 miles is pretty close to the Mississippi River?

A. On the New Roads Branch, yes; on the main line, no.

Q. 94. Until the Texas and Pacific Railway leaves the Mississippi River and runs up into the interior, and where there is not much movement of seed, the rate is about the same as a steamboat rate, is it not?

A. The rate is lower, I think; \$1.25 against a \$2 rate by boat at the present time. That rate ought to be taken out.

Q. 95. As a matter of fact, the movement on that \$1.25 rate is extremely light?

A. It is very light.

Q. 96. It does not amount to anything. That concession to New Orleans would not be of any substantial benefit to the mills here, would it?

A. I think not.

Q. 97. When you get above that point, and where the river does not furnish any competition, is there, or not, a rapid rise in the rate?

182 A. The rates advance on the short haul on the Texas and Pacific Railway too much; in other words the bulk of the movement of cotton seed to local mills is under 50 miles and the short haul is high.

Q. 98. The short haul is high?

A. Yes, sir.

Q. 99. You are speaking of the tariff of the railroad itself, or of the Railroad Commission?

A. I mean the present rates.

Q. 100. You say the distance tariff is low and the short haul high?

A. Yes, sir; relatively.

Q. 101. Can you give me an illustration of that; take ten miles for instance, what is the rate?

A. I am not sufficiently familiar to give it off-hand, the distances, the tariff shows that. It runs up to fifty miles proportionately; a short haul is higher than a longer haul.

Q. 102. You have been in this business a long time, and have you not had occasion to figure the advantages and disadvantages of Louisiana oil mills as compared with mills in another territory, and mills along the Texas and Pacific Railway, as compared with mills in other states where cotton seed are transported to oil mills?

A. I have figured the rates; yes, sir.

Q. 103. Did you hear the statement made by any of the representatives of the interior mills that a reduction as much as fifty cents a ton in the rate on cotton seed to New Orleans from other localities would enable the New Orleans mills to go into the territory and if they had to pay the advance represented by the reduction in the rate, it would put them out of business?

A. It would affect them, but not put them out of business.



Q. 104. As a matter of fact, now, is it not true that these interior mills, to a man, oppose any change in the tariff, which is understood to be against New Orleans, unless there is a corresponding reduction on the products from the interior mills?

A. They do.

Q. 105. Say the claim is made and advanced on the part of the interior mills, and on the part of the railroad—this railroad, I mean—by the fixing of a rate, would prevent competition from New Orleans in the cotton seed market in their territory; is not that a fact?

A. There is not such a great disparity of rates between the country and the city, until you get quite a distance.

183 Q. 106. What distance?

A. When a country mill has to haul seed over fifty miles New Orleans can compete [compete] with them with a rate of \$2.50 per ton.

Q. 107. Is not the present rate of the Texas and Pacific Railway even higher than that?

A. I think so.

Q. 108. If you go above that figure then, it would prevent competition, would it not?

A. I do not understand?

Q. 109. I mean to say if you get a rate above \$2.50?

A. No, there are points where New Orleans can pay \$3 and compete with the interior mills on the rate they pay on the products.

Q. 110. Do you, or not, know that as a result of the rate on the Texas and Pacific Railway for distances above 120 miles the New Orleans mills are practically out of that market?

A. They are not out of the market so much on the present rates anywhere between New Orleans and Alexandria, and New Orleans and Ferriday, on account of the rates, as much as on account of the difficulty in buying at that distance and the scarcity of cars.

Q. 111. What is the difficulty in buying if you are willing to pay the market price?

A. The length of time it takes the seed to New Orleans, and you can get four cars going north to one car going south.

Q. 112. Do you know the reason of that?

A. They claim on account of the number of foreign cars they get furnished for shipment, going towards home.

Q. 113. That is, going north?

A. Yes, sir.

Q. 114. What is the distance from New Orleans to Bunkie, for instance?

A. 162 miles, I think.

Q. 115. That is a large cotton seed producing country, is it not?

A. Yes, sir.

Q. 116. That is about the center of the lower cotton seed belt, is it not?

A. Yes, sir.

Q. 117. Now I notice that the rate from 150 to 160 miles, the

present rate I speak of now, of the railroads' own tariff, is 16½ cents per 100 lbs., or \$3.80 a ton; but from 160 to 220 miles it is 17 cents per 100 lbs., or \$3.40 per ton; do you know of any rate anywhere on cotton seed as high as that?

A. I do not remember any at the minute.

184 Q. 118. Did you ever hear of a rate as high as that on any southern railroad in the cotton seed country outside of Texas, where the same policy apparently prevails?

A. No, I believe that is as high a rate as I know of.

Q. 119. Well, now, under this tariff, does a shipper, or the consignee (the mill) have to pay any additional sum?

A. There is a concentration charge for interior mills.

Q. 120. How much is that?

A. 60 cents a ton.

Q. 121. From where does that apply?

A. I do not know whether it applies to all the mills on the Texas and Pacific, except New Orleans, or not, but I believe it applies—

Q. 122. That does not apply to New Orleans or Gretna?

A. I think not, but I do not know; the tariff shows it.

Q. 123. In addition then to this mileage tariff of this railroad, there is a concentration charge, of how much did you say?

A. 60 cents a ton.

Q. 124. And is any part of that refunded when you make a shipment out of the product, and if so, what is the basis of that product?

A. They refund that 60 cents when you have shipped the product out of the seed they bring in; I think that is the only clause.

Q. 125. Do you recollect what quantity of product, for instance, you have to ship in order to get the full amount of 60 cents a ton?

A. My recollection is there must be half as many tons of oil and cake as seed shipped in.

Q. 126. That would be 50% of the tonnage of the seed represented—

A. It must be oil and cake.

Q. 127. That would have to go out over the same road, of course?

A. Yes, sir.

By Judge GUYON:

Q. 128. That three cents per 100 pounds to guarantee—

A. That you will give them the freight back.

Q. 129. The road getting that 60 cents?

A. That is the reason for that concentration charge.

By General MILLER:

Q. 130. That is intended as a guarantee that you will ship the product by that road?

185 A. There are some terminal points where they cannot ship the product unless they add that concentration charge.

By Judge GUYON:

Q. 131. Do these mills complain of that three cents per 100 pounds?

A. Yes, sir; if they hold your money.

Q. 132. What was the reason of that?

A. Why do the mills complain?

Q. 133. Yes?

A. In our own case, it is trouble, and we put the money in their hands which we get back sometimes.

By General MILLER:

Q. 134. You have an interest in an oil mill now in operation in New Orleans?

A. No, sir.

Q. 135. You have been connected as manager with three of the oil mills in New Orleans?

A. I was for two and a half years.

Q. 136. Do you know whether or not there has been any change in the rail rates on seed to New Orleans since that time?

A. There has been no substantial change, that I know of, in ten years.

Q. 137. Do you recollect how the rates from the territory on the Texas and Pacific Railway compared with the rates then on the other railroads outside of Louisiana to New Orleans?

A. We bought but few seed except on the Valley Road and that was affected by competition and the rates were cheaper per mile than the Texas and Pacific rates?

Q. 138. Were they not very much cheaper?

A. They were, I think, \$2.25 north of Vicksburg.

Q. 139. What was the rate between Slaughter and Vicksburg to New Orleans on that road?

A. I think it varies; I do not know the rate between Slaughter and Vicksburg.

Q. 140. Have you not got a blanket rate from points between Slaughter and Port Gibson to New Orleans?

A. No, I think the rates north of Baton Rouge to Vicksburg are graded by mileage.

Q. 141. There is no substantial competition, or any competition at all, between the Mississippi River and the Mississippi Valley Railroad from Slaughter to Warrenton?

A. There is not.

186 Q. 142. Warrenton is about eight miles south of Vicksburg?

A. Yes, sir.

Q. 143. Do you know how the rate on the Illinois Central compared with the Texas and Pacific?

A. I do not know.

Q. 144. Do you remember whether or not it was substantially lower?

A. My recollection is of the matter—but we bought so few seed on the Illinois Central I do not remember.

Q. 145. You bought seed largely on the Valley Road?

A. Yes, sir.

Q. 146. Didn't you buy seed all the way between Baton Rouge and Vicksburg, as well as above Vicksburg?

A. We bought seed as far as Gloster, Miss., and then on the Yazoo and Mississippi Valley north of Vicksburg.

Q. 147. Do you know the distance to Gloster?

A. It is over 150 miles.

Q. 148. Do you know what the rate was?

A. No, sir.

Q. 149. It did not exceed \$2.25, did it?

A. I do not remember.

Q. 150. I want to be certain on that point, whether the 60 cents refund is applied to all mills, whether at competitive points, or non-competitive points.

A. It is applied at non-competitive points because we are at a non-competitive point, at Batchelor Station, and we pay it.

Q. 151. You pay it? To begin with, say what a rate—What is the average distance by water to your mill, that you haul your seed?

A. We do not haul seed over thirty miles.

Q. 152. Thirty miles represents the average and the rate is 7½ cents per 100 pounds; that is the railroad's own tariff, that is, on the branch line?

A. We ship some seed from Port Allen to Batchelor; to Batchelor, I think it is 40 miles.

Q. 153. Forty-five miles, the rate is 8½ cents per 100 pounds on the Port Allen Branch, and you say that concentration charge is paid there and refunded when making those shipments?

A. Yes, sir.

Q. 154. How do you claim that refund, how do you make your bills, and how soon is it paid?

187 A. At Batchelor it has been paid—in fact, I am not sure;

I think they make a bill, with a statement, and it is paid sufficiently prompt for us to have no complaint about it.

Q. 155. Do you know of any cases where there were disputes between the railroads and the mills about weights, etc., that resulted in considerable delays?

A. I have heard none, directly.

Q. 156. Being familiar with the whole business, do you know whether or not cotton seed is a kind of traffic handled by much ease by railroads?

A. It seems to me it is as easy a freight as they have.

Q. 157. How are the cars loaded, as a rule?

A. They will average 25 or 30 tons.

Q. 158. As a matter of fact, however, how are the seed put on the cars?

A. Oh, the shipper loads them.

Q. 159. They have warehouses at the stations?

A. They have warehouses at the stations, and load the seed in the cars.

Q. 160. And the cars are set on the sidetrack and switched?

A. Yes, sir.



Q. 161. And the shipper does the loading?

A. Yes, sir.

Q. 162. Who unloads the seed, the consignee or the railroad?

A. The consignee.

Q. 163. All that the railroads do is to set the cars on the switch, and when it is loaded by the shipper take it and send it to destination where it is unloaded by the consignee?

A. Yes, sir; and the risk of damage by wreck is small.

Q. 164. I was going to ask you what about the risk of damage?

A. If handled properly, it is not much, except by fire, which never occurs spontaneously in seed.

Q. 165. What about the difficulty of setting fire to a carload of seed in bulk?

A. You cannot set them afire unless you set the car on fire first.

Q. 166. What has been your experience in managing oil mills in respect to claims for damage or destruction of cotton seed in bulk by rail?

A. I do not think that I ever had but two cars of seed paid for by wreck; one was turned over and one was burned up.

Q. 167. In case of a wreck, where there was no fire, no destruction by fire, do they gather up the seed and bring them on?

A. If they dump them on the ground they can gather them up and the claim amounts to but little; if they get in any water they will lose them.

Q. 168. This railroad runs through what sort of a country, in the main?

A. It is an alluvial country, but it would be the exception where they would spill out a car of seed except in the Atchafalaya swamp where they could not pick it up.

Q. 169. I had in mind the manner of transportation of seed, and all that sort of thing, the character of country traversed by the Texas and Pacific Railway; does, or does not, that involve any serious difficulty in the way of grades, etc.?

A. No, the only thing they have to contend with is in the cost of high water.

Q. 170. That is, in the event of crevasses?

A. Preparatory of holding their levees against a probable break.

By Judge GUION:

Q. 171. How far does that condition of things extend in this State?

A. All the way to Farriday from New Orleans, on the New Roads Branch.

Q. 172. On the main line, but towards Bunkie, how far north does that condition extend?

A. I suppose to Melville, 20 miles.

By General MILLER:

Q. 173. Did you ever take any pains to observe the average train load on the Texas and Pacific Railway?

A. I have not.

Q. 174. Average number of cars to a train load?

A. No, but they can haul as much tonnage per engine from Alexandria to New Orleans, or from Ferriday to New Orleans as in any other section of country. It is a tide water road; it is alluvial.

Q. 175. There is nothing in the topography [topography] of the country anywhere that makes transportation difficult?

A. Not to my knowledge.

Q. 176. You cannot recall what the differential in favor of Cinclair amounts to?

A. I cannot, but it gives them a large advantage over other mills; the rate on the product is cheap, the rate on the seed on a mileage basis is cheaper than other competitive points.

Q. 177. Did you state what reason, if any, the railroad assigned for that preferential?

A. I did not.

Q. 178. Have you ever discussed it with a traffic representative of the Texas and Pacific Railway Company?

A. I made no strong point about that.

Q. 179. Did you hear them make any statement in reference to it before the Railroad Commission?

A. I did not, because that rate was in sometime before I knew it; the preferential rate that affected me I went before the Railroad Commission and it was taken out, because it was very unfair.

Q. 180. Which one was that?

A. That was a special between Bunkie and New Roads.

Q. 181. What was the distance?

A. About 100 miles.

Q. 182. If the New Orleans mills were allowed to go in that territory, there would not be any substantial movement of seed under 150 miles, would there?

A. There are lots of seed moved from the Gros Tete country, say 110 miles, and from there to the Natchitoches Branch.

Q. 183. The Natchitoches Branch?

A. Cypress.

Q. 184. That is over 200 miles?

A. Yes, sir.

Q. 185. Something like 240 miles, is it not?

A. Yes, sir. When the New Orleans mills get so far from home, it is hard to buy the seed in competition with the interior mills at even figures.

Q. 186. Do not the New Orleans mills buy seed on other railroads where the freight rates permit stowing them in warehouses for sometime before they actually bring them forward?

A. On some roads; yes, sir.

Q. 187. Why could not that be done on the Texas and Pacific Railway if they got a freight rate that permitted them to go into that territory?

A. They can do it.

Q. 188. Why cannot the New Orleans mills buy in the interior in competition with the local mills?

A. They can. The rates are high. The question of seed keeping until they can get cars is a very serious one in the southern half of Louisiana.

190 Q. 189. Has there been much complaint, much reason for complaint, on account of the lack of cars to move seed in the last two years?

A. There are complaints always.

Q. 190. Do you know what that is due to? Is it due to insufficient equipment, or on account of preference to get through traffic?

A. I do not know; I know that I had a mill in the interior that has been closed down at different times, three weeks at a time, for want of cars, and they made me carry an average of 400 tons of cake for three months on a declining market, before I could move it on account of lack of cars.

Q. 191. Through trains and cars were in constant operation were they not?

A. They were.

Q. 192. As a matter of fact, have you ever noticed how the cotton seed are moved, whether by local—what they call local freight trains—or by through trains?

A. Most of the seed we buy are moved by local trains.

Q. 193. It is contended by the railroad in this case that the cost of handling cotton seed, because of the fact that they are handled almost entirely by local freights, is larger, more expensive than the service by through trains; are you able to state whether that is so or not?

A. I see no reason why it should be so.

Q. 194. As a matter of fact, do not these local trains run every day over all parts of the line in order to serve the local trade or business—compelled to run; is not that so?

A. I think; yes, sir.

Q. 195. Now, if these cars are deposited on switches for seed and then taken out by the locals, can you see any reason why there should be any great expense involved in that?

A. I see none; they pay on mileage; they pay the crews on the number of miles they run.

By General MILLER:

Q. 196. You say the crews are paid on a mileage basis?

A. I so understand, on the miles they travel.

Q. 197. Does it seem to you that if they had to stop their through freights to pick up these cars that the expense of handling through trains would be enlarged?

A. Through trains, as I understand it, have all they can pull anyhow; it would not be good business to stop a through train, that is supposed to have all it can pull.

191 Q. 198. Are you much over this line of the Texas and Pacific?

A. A great deal.

Q. 199. Do you see any reason why the expense of handling traffic,

freight traffic, in Texas, over the line of the Texas and Pacific, should be any more than it is in Louisiana?

A. I do not.

Q. 200. I understand that the report of this company shows that while the gross earnings per mile of road in Texas are very much larger than they are in Louisiana, the net earnings are nearly the same; I ask you if you can give any reason from our observation of the conditions along this line of railroad in Texas, why that should be so?

A. I can see none.

Q. 201. You have been on the line of this Texas and Pacific Railroad for what length of time?

A. Since 1883.

Q. 202. Do you know whether or not there has been any considerable improvement made in the condition of the roadbed and the facilities for transportation?

A. They have improved it a great deal in the last few years.

Q. 203. How does the locomotive capacity of this date compare with, say 15 years ago?

A. I do not know.

Q. 204. It is shown here that the gross earnings of the Texas and Pacific Railway Company in Texas, per mile, is \$7,478.50; and in Louisiana, \$6,466.53—a little over \$1000 a mile less?

A. Is that gross?

Q. 205. Yes. And in Texas the net earnings are \$2,274.37 per mile, and in Louisiana the net earnings are \$2,230.19, about \$44 less per mile, net.

A. They have been spending lots of money in making a good road out of the Texas and Pacific within the last five or six years.

Q. 206. They have done a great deal of work?

A. Lots of work that has been in betterments has been charged against operating expenses, I expect.

Q. 207. Is there any other way to account for it?

A. I do not see any.

Q. 208. Well, it would not be necessary to duplicate within a short time the permanent improvements that they have made on the railroad, would it?

A. They are making permanent improvements in taking out a lot of small bridges and culverts they will never have to do again. Louisiana in my judgment will produce more revenue per mile on the Texas and Pacific than in Texas, because the country is richer.

By Judge GUYON:

Q. 209. You said something a moment ago which I did not exactly understand, and I will be glad to have you repeat it so I will understand it, concerning the difference in price that cotton seed would be worth if brought to New Orleans; did I understand you to say something in that regard?

A. The products from cotton seed will sell for more money net at the mill in New Orleans than they will net at any interior mill.

Q. 210. How about seed?



A. The seed consequently are worth more money to a mill in the interior.

Q. 211. How about the producer? Would not the producer get more money for his seed, if the results you have just spoken of were obtained?

A. If they were bought on that basis, he would pay the basis on which they were bought on an average freight, paying the stations the same price.

By the MASTER:

Q. I understood you to say that the seed in New Orleans is worth from \$1 to \$1.50 per ton more than at any way-station?

A. Yes, sir.

Q. And the reason it is so is because right here it is already virtually at the ship's side where the product can be transported to the ship without much expense?

A. That is the idea.

Q. When the product is made out in the country it has to be shipped here and has to pay another freight?

A. That is the idea.

By Judge GUION:

Q. 212. Then do I understand you to say that if the bulk of raw cotton seed was brought to New Orleans, the producer would get more money than if sold to the local mills in the country?

A. No, because the freight rate is higher; the city will pay no more for it than it has to.

Q. 213. I understood you to say that the producer would get more money for it by reason of the fact that the manufacturer would get more for it here than in the country?

A. The manufacturer gets more gross out of a ton of seed here than an interior mill, but he does not necessarily give that to the producer.

Q. 214. The manufacturer does not necessarily give it, but from a standpoint of economy wouldn't the producer be entitled to more for his seed if the manufacturer could get from \$1 to \$1.50 more per ton for his manufactured product here in New Orleans than in the country?

A. There is a difference in the rates that offsets that.

Q. 215. Would that difference amount to \$1.50 per ton?

A. From \$1 to \$1.50; yes.

Q. 216. Then they would be on a parity?

A. Yes, sir; in other words, if seed are worth \$13.50 gross in Alexandria, they are worth from \$14.50 to \$15 gross in New Orleans.

Q. 217. What is the difference in the freight rate between Alexandria and New Orleans?

A. It depends on the mileage.

Q. 218. Well, suppose you have a point 30 miles from Alexandria, take that as an average, as between a shipment into Alexandria and a shipment into New Orleans?

A. The mills would be nearly equal.

Q. 219. How many oil mills engaged in the manufacture of cotton-seed oil and cotton-seed cake are there in New Orleans?

A. Six.

Q. 220. Now, at this time?

A. Yes, sir.

Q. 221. Was the same number engaged last year?

A. Yes, sir; for fully eight years there has been no change in the number.

Q. 222. For the last eight years?

A. Yes, sir.

Q. 223. I mean to say, of course, on the Texas and Pacific Railway?

A. There are two only with direct tracks from the Texas and Pacific on that side of the river.

Q. 224. Which side?

A. The west side, in Gretna.

Q. 225. What railroad in this state runs through the best cotton producing territory, and the best cotton-seed producing territory in the state?

194 A. The Texas and Pacific.

Q. 226. All of these mills in New Orleans you have just mentioned can be reached by switch connections?

A. They can.

Q. 227. All of them?

A. Every one of them.

Q. 228. Do you know whether any of these mills you have mentioned have gone out of the business at all within the last few years?

A. One has and a second one is going.

Q. 229. Which one has gone out of business?

A. The Delta mill.

Q. 230. Operated by whom?

A. It was operated by C. W. Drown, last.

By the MASTER:

Q. Is that one of the mills on the Texas and Pacific Railway?

A. No, sir; it was a mill in New Orleans.

By Judge GUION:

Q. 231. The Delta mill you say——

A. It has not run in several years.

Q. 232. For how many years has it been running?

A. Three or four years.

Q. 233. You said that one of the mills——

A. One of the mills that made no money, that is the New Orleans Cotton-Seed Oil Company, that is located on the Illinois Central tracks; in fact New Orleans tonnage is less than half of what it was eight years ago.

Q. 234. Tonnage of what?

A. Tonnage of cotton-seed.

Q. 235. Has the cotton production fallen off?

A. It has not.

Q. 236. Has it increased?

A. It has.

Q. 237. I mean now in the State of Louisiana?

A. In the State of Louisiana, yes.

Q. 238. During that period of time that you say cotton-seed brought into New Orleans has fallen off one-half, the production of cotton in Louisiana along the Texas and Pacific Railway, particularly, was it increased?

A. It has increased. The country is growing on that line all along.

Q. 239. Can you give any reason for the decrease in—

195 A. Mills are being built in the interior on the line and get the preference in the purchases.

Q. 240. Can you tell me anything at all about how many mills there are in Gretna on the Texas and Pacific Railway?

A. Two.

Q. 241. Do you know anything about those two mills, how long they have been in operation?

A. I suppose 20 years; one of them is the oldest mill in the state.

Q. 242. Do you know anything at all of your own knowledge concerning the products they have been working up in the last two or three years as compared with previous years?

A. The quantity is decreasing rapidly.

Q. 243. Do you know anything at all as to the conditions surrounding the transportation of cotton-seed in the State of Mississippi as compared with Louisiana?

A. I do not know much about it, except from hearsay.

Q. 244. Do you know whether the character of country, for instance, that the Yazoo and Mississippi Valley runs through in the State of Mississippi?

A. Well, north of Vicksburg it runs through an alluvial country; the conditions are very similar to the conditions on the Texas and Pacific in Louisiana, south of Alexandria.

Q. 245. And how about south of Vicksburg as compared with Louisiana south of Alexandria?

A. The character of the country as to hills is somewhat similar, but there is more business on the Yazoo and Mississippi Valley Railroad in that section than on the Texas and Pacific road between Boyce and Shreveport, I should say, north of Alexandria; it is older, better developed.

By the MASTER:

Q. Do you mean south of Vicksburg is better than north of Alexandria?

A. Yes, sir.

By Judge GUION:

Q. 246. I ask you as compared between south of Vicksburg and south of Alexandria, how do the conditions compare there between those two parts of the respective states?

A. South of Alexandria on the Texas and Pacific is a better country than south of Vicksburg on the Yazoo and Mississippi Valley road, because one is alluvial land and the other is hilly land.

196 Q. 247. Then you would say that south of Alexandria, as far as what point did you say, you considered better country than south of Vicksburg for the same point?

A. From Alexandria to New Orleans is a better section than from Vicksburg to Slaughter on the Yazoo and Mississippi road.

Q. 248. Do you know anything at all about the conditions surrounding transportation in the State of Mississippi on the Illinois Central road on its main line?

A. I do not.

Q. 249. Have you ever been through that country?

A. Only seldom and as a rule at night.

Q. 250. I understood you to say a moment ago that you did not know what reason had been assigned by the Texas and Pacific Railway Company when it requested that the rate afterwards put in for the Cinclair Cotton Oil Mill should be made the rate for transporting cotton-seed to that point; is that correct?

A. I do not know how from the Texas and Pacific people; all I know is hearsay.

Q. 251. Do you know at what time application was made by the Texas and Pacific Railway Company to the Railroad Commission of Louisiana to put in the Cinclair rate?

A. I do not.

Q. 252. What would you say if you were informed that the Texas and Pacific Railway Company had applied to the Railroad Commission of Louisiana to put in the present Cinclair rate, which they are now operating upon and made the application on the grounds that the rates assigned for Cinclair from various points were the same as those enjoyed by other oil mills on other lines handling such business for similar distances; would you say that that statement was true or false?

A. I would say that statement was not a fact, somebody is mistaken.

Q. 253. Do you know anything at all concerning the relative cost of cotton production in Louisiana as compared to Texas?

A. I should say that cotton is produced in Texas very much cheaper than in Louisiana, because the cost of cultivation is much less than in alluvial land.

By the MASTER:

Q. When you say that, do you mean to say that the cost of production in the same class of lands—

197 A. The lands through which the Texas and Pacific road runs, the cultivators can be used until the cotton is laid by, on the hilly and prairie lands, where in this alluvial land the cotton gets too big to use the cultivators.

By Judge GUION:

Q. 254. Now, I am reading from a report made by the United States Department of Agriculture and prepared under the direction of Mr. John Hyde, the statistician; it would seem that the cost of cotton production in Louisiana, as compared with Texas, is more than in Texas?



A. That is what I said.

Q. 255. You said that, did you? I did not understand you.

A. Yes, sir; I have heard planters in that country say that two men could cultivate 50 acres of ground; they cannot do it in the alluvial land.

*Offer.*

Judge GUION: In connection with the testimony of the witness, counsel for defendants now offers that part of page 7 of the Bulletin No. 16 from the United States Department of Agriculture, Division of Statistics giving the cost of cotton production throughout the United States, prepared at the Government Printing Office at Washington in 1899, for the purpose of showing that according to said Bulletin the average cost for producing an acre of cotton in 1896 in Louisiana, was \$18.05 and in Texas was \$13.60, restricting the offer to that part of the Bulletin so introduced, marked D-13, and it is agreed that if a later one can be obtained it will be put in evidence.

*Cross-examination.*

By Judge FREEMAN:

X Q. 1. You have a mill at Baton Rouge, I understand?

A. Yes, sir.

X Q. 2. What is your extreme territory now for getting your seed for your mill under the present rate?

A. On account of the way the agency is established I do not buy any seed over 40 miles.

X Q. 3. Where is your next mill situated, what other mill have you?

A. My next mill is on the Texas and Pacific at Batchelor.

X Q. 4. How far is that from Baton Rouge?

198 A. I think that is 42 miles.

X Q. 5. How far can you go out and get seed for that mill?

A. I never bought but one car of seed south of Port Allen; I could buy a little further distant.

X Q. 6. How far south can the Shreveport mills get their seed, at the present rates, on the Texas and Pacific?

A. I do not know.

X Q. 7. Can they go as far south as 100 miles?

A. I should say, yes.

X Q. 8. Farther than that?

A. When they get farther than that the mileage tariff is much in favor of the local mills.

X Q. 9. There is a mill at Alexandria, how far south can they go to get seed?

A. They rarely go south of the Atchafalaya River.

X Q. 10. What is the distance?

A. I do not know—66 miles.

X Q. 11. How far north on the Texas and Pacific do the New Orleans mills go to get their seed, under the present condition of rates?

A. I do not think they go above a \$3.00 rate.

X Q. 12. You stated a while ago they went as far as Ferriday?

A. Yes, sir.

X Q. 13. That is nearly 300 miles?

A. No it is not.

X Q. 14. About 200 miles—198 miles?

A. I do not know the rate on that branch, but that is in competition with the Mississippi River. I know they cannot buy beyond Ferriday.

X Q. 15. Do the New Orleans mills get any seed at all by the Mississippi River?

A. Lots of it.

X Q. 16. Do they get a large proportion of their seed by the Mississippi River?

A. They get over twice as much seed from the Mississippi River—they get over three times as much seed from the Mississippi River, on the same mileage, as they do on the Texas and Pacific.

X Q. 17. How does the rate on the river compare with the rail rate?

A. A minimum of \$2.00 to \$2.50 maximum.

X Q. 18. By rail?

A. By water.

199 X Q. 19. \$2.50 by water?

A. \$2.00 minimum to \$2.50 maximum rate by water.

X Q. 20. Do the Alexandria mills get any seed by water?

A. Not many.

X Q. 21. Do the Shreveport mills get any seed by water?

A. They get a little more than Alexandria.

X Q. 22. Down Red River?

A. Up and down Red River.

X Q. 23. Do the Bunkie mills get any seed by water?

A. The Bunkie mills are away from water rates.

X Q. 24. Does the Boyce mill get any seed by water?

A. They do.

X Q. 25. To what extent?

A. I should say three times as many as they do by rail.

X Q. 26. Suppose the New Orleans mills were upon an actual parity with the interior mills, I think you classed them as the country mills, in the matter of rates, I understand you testified they would have a decided advantage in the matter of the product?

A. If they were on the same parity one would offset the other.

X Q. 27. I mean as to seed. Now, I mean the same parity as to the price to be paid for seed. For instance, to illustrate what I mean—you say seed are worth \$1.50 more in New Orleans than they would be at Boyce, for instance, on account of the freight rate?

A. Yes, sir.

X Q. 28. Suppose then that you had a freight rate that—

A. I would say \$1.00 instead of \$1.50.

X Q. 29. Suppose you had a freight rate that would offset that disadvantage so you could go into the Boyce territory and pay the same price for seed that the Boyce mills pay, f. o. b. cars at the mill in Gretna; would you not have an advantage over the Boyce mill?

A. Both paying the same price f. o. b. cars at stations?

X Q. 30. No; at the mill.

A. You mean same delivery price at the mill?

X Q. 31. Yes.

A. The Gretna mill would make more money than the Boyce mill, by a \$1.00 a ton.

X Q. 32. When the New Orleans mills or the Gretna mills go into the Boyce territory to buy seed, would they pay more for seed in that territory or less for seed in that territory?

A. As a rule they pay the same price. As you get closer to a mill the mill at a distance has to pay a premium because of the nearness and the convenience to the shipper in shipping to a nearby point.

X Q. 33. In order then to be put on a parity with these interior mills which are in the producing territory, you say you have to have a freight rate to New Orleans or Gretna to offset the advantage of the mills in the producing territory?

A. The freight rate on seed to New Orleans and the freight rate on seed to the interior mills, and the freight rate on products from the interior mills to New Orleans should all be considered together and made so that the mills would be on the same parity.

X Q. 34. In other words, your contention is, that the mill located in the producing territory should not have any advantage over a mill that is constructed from 150 to 200 miles away from the producing territory?

A. That would be modified by the distance. In other words, after you get 40 miles, a mill should have a rate, 50 miles from the mill to offset the rate to the terminal points; they ought to be able to buy seed 50 miles from the mill in competition with the terminal mill.

X Q. 35. Regardless of the distance that the terminal mill is from the producing territory?

A. There reaches a point in a rate on mileage where distances does not cut much figure, because you can only haul about 340 miles in this state unless you go north of Shreveport.

X Q. 36. Do you know of any state where the average haul on seed is as much as 150 miles to the mill, either Mississippi, Arkansas, Alabama or Georgia about which you have been asked?

A. I know very little of those older states.

X Q. 37. Is it not a fact that the average haul of seed, as a rule, does not extend beyond 60 miles?

A. I am not posted about that in the older states.

X Q. 38. In Louisiana?

A. I think the average haul in Louisiana is less than 60 miles.

X Q. 39. Have the New Orleans mills bought any seed in your territory this last season?

A. They buy all the time.

X Q. 40. What do they pay?

A. You mean freight or price?

X Q. 41. I mean price of seed per ton?

A. It varies from \$11.00 to \$14.00.

X Q. 42. What do you pay for the same seed?

201 A. I pay the same price. New Orleans makes the price, in other words, the small mills must follow the big ones in making the price.

X Q. 43. Do I understand you to say that the mills in New Orleans fix the price?

A. They are in a position to do it.

X Q. 44. What have they done this last season?

A. The price is generally named from New Orleans.

X Q. 45. Then the freight rate cuts no figure as to the price of seed?

A. Oh, yes; it does. New Orleans figures an average freight rate for their seed, and pays an f. o. b. price which is generally uniform all along the line, and the mills with which they compete, with which New Orleans competes, pay the same price f. o. b., that New Orleans does.

X Q. 46. Regardless of the distance they have to haul their freight?

A. Yes, sir; when they cannot get that price they do not buy.

X Q. 47. Then, if the New Orleans mills have to meet this competition of \$1.00 to \$1.50 a ton, and they fix the price for seed, does that mean they pay more or less for seed in the territory of the country mills?

A. They generally have to pay more.

X Q. 48. Then, if they pay more, the producer gets the benefit of the increased price?

A. Yes, sir; but the interior mill always meets the other fellow's price until there is a loss in it.

X Q. 49. Should not the interior mills be entitled to their natural advantage over the New Orleans mills on account of having gone into the interior and built their mills at the point of production?

A. I think they should be taken care of and a rate made that would not discriminate against them.

X Q. 50. Well, any rate that is made that discriminates against them would be an unjust rate as to the interior mills, would it not?

A. I should say so.

X Q. 51. As a matter of fact, taking your own mills for example, the manufactured product of the seed that is brought in, is sent out over the road bringing it in, is it not?

A. It is less the local consumption.

X Q. 52. Is that an advantage to the railroad company bringing the seed in, to haul the manufactured product out?

A. It gives them more tonnage.

202 X Q. 53. And more revenue?

A. I think so.

X Q. 54. In fixing the rate on seed to the interior mills, was not the fact taken into consideration that the road would also get the outbound manufactured tonnage?

A. That may be, but I think really what fixed the rate, they figured the traffic could stand it.

X Q. 55. Do you mean by that the railroad company or—



A. I mean the railroad company. They figured what they considered the traffic could stand and fixed the rate.

X Q. 56. Well, the railroad men in Louisiana, in fixing the rate on seed to the manufacturing towns, did they take into consideration the fact that the roads would get the output?

A. I do not know on what they based it, I think they did. There are very few points on the Texas and Pacific road, to which, if they take the seed they will not get all of the freight back without making that concentration charge. I expect Shreveport is the only point on the line where there would be any question about their getting their product back out of the seed they take in.

X Q. 57. As a practical business proposition, could not the roads afford to make a lower rate conditioned upon getting the manufactured product out, than they could on a straight rate on seed without the understanding—

A. That is the only station on your line where that applies.

X Q. 58. I am not asking you as to the actual fact, but simply as an actual business proposition, could not a railroad afford to give a lower rate on seed to an oil mill with the understanding they would get the manufactured product out, than they could simply to take the seed with the understanding they were not to get any of the product out?

A. Certainly, the same seed would produce more tonnage and revenue.

X Q. 59. The inducement then, to get the manufactured product out is a valuable inducement to have a low seed rate in?

A. Yes, sir; but I never saw a low seed rate on the Texas and Pacific yet.

X Q. 60. That is an inducement, is it not. Answer the question?

A. Yes, sir.

X Q. 61. Suppose there were two mills located at the same point and the commission should authorize a rate, the same rate on seed to both mills, but as to one of the mills it should provide that  
203 the road hauling the seed in would get 50% of the manufactured output; which mill would it be to the interest of the road to haul the seed for?

A. The one producing the most revenue.

X Q. 62. That is the one giving the manufactured output to the road after it is manufactured?

A. Yes, sir; certainly. There are lots of places in the older states where nothing but the oil is shipped out over the roads. The meal and hulls—

X Q. 63. And the rate is fixed in proportion?

A. No; the rates are cheaper than Louisiana rates.

X Q. 64. If the New Orleans or Gretna mills did not have river to get their supply of seed, could they compete with the interior mills at all?

A. No; they would have to move.

X Q. 65. Under any sort of a rate—

A. No; not that.

X Q. 66. Wait a minute. Under any sort of rate that did not give them the difference in the actual cost of freight to move it in?

A. New Orleans is the only terminal point I know that has not increased its tonnage, in the last few years. Houston has materially increased its tonnage and it has no water rates.

X Q. 67. You are mistaken about that?

A. On seed in?

X Q. 68. No. But then it has water rates on the product out. They have got Galveston right there?

A. No; but I mean on gathering seed they buy all over the state and they have increased their seed receipts, whereas New Orleans is the only terminal point I know that has lost seed tonnage regularly.

X Q. 69. Do you know how far Houston gets her seed before it reaches the present rate in effect on New Orleans?

A. I do not. I have seen the Texas Commission's rate, but—

X Q. 70. Do you know whether or not [not] the interior mills have increased in number within a distance of 100 miles near Houston within the last five years?

A. I do not know whether they have increased or not.

X Q. 71. How many interior mills have been constructed in Louisiana on the Texas and Pacific Railroad within the last ten years?

A. Torras, New Roads, Cinclair, Lecompte, Long Bridge, Sarah, Alexandria, Lake End, Mansfield, I think that is all.

X Q. 72. Practically. Except that of Natchitoches and Shreveport mills?

204 A. Bunkie was built ten years ago this summer. I built the Bunkie mill. Except Natchitoches and Shreveport and one Alexandria mill and New Orleans.

X Q. 73. Have any interior mills at any other points in Louisiana, other than on the Texas and Pacific Railroad, been constructed in the last five or ten years?

A. Lots of them.

X Q. 74. Is it not a fact then that this shortage in the manufactured output of the oil mills in New Orleans is to be attributed alone to the construction of a large number of interior mills in the last 8 or 10 years?

A. There have been practically no new mills built in four years, and New Orleans got 40% more tonnage four years ago than it will get this year on the same crop, and there have not been over two new mills built in that territory.

X Q. 75. Is there an association known as the Cotton Seed Crushers Association in existence now?

A. Yes, sir.

X Q. 76. What mills belong to that association?

A. You mean the Interstate Association?

X Q. 77. Yes.

A. Over 400 mills throughout all the southern states.

X Q. 78. Do all of the Louisiana mills belong to that association?

A. Not all of them.

X Q. 79. What mills do not belong to it, in Louisiana?

A. I cannot call them from memory.

X Q. 80. Do any of the Shreveport mills belong to it?

A. I think all of them.

X Q. 81. And the Bunkie mill?

A. None of the Union Oil Company's mills belong to it.

X Q. 82. Is there a Louisiana Cotton Seed Crushers Association?

A. Yes, sir.

X Q. 83. What mills belong to it?

A. Nearly all of them except the Union Oil Company's mills.

X Q. 84. Where is the Union Oil Company's mills?

A. At Gretna, Torras, Bunkie, Shreveport, Vidalia and Monroe.

X Q. 85. Is the seed territory practically agreed upon and divided up between the various mills in these organization-?

A. No, sir.

205 X Q. 86. Is the price at which the seed is to be bought, discussed or fixed by these organizations?

A. It is discussed but you can't fix it.

X Q. 87. Is there any attempt made to fix it?

A. There has been but you can never get them to hold it two weeks.

X Q. 88. What was the extreme limit when the price was fixed, what was the extreme distance that each mill was permitted to go to get its seed?

A. Anywhere they saw fit.

X Q. 89. And what limitation, if any, was put on the price?

A. None, except the interior mills were supposed to pay the New Orleans price, but it was never done.

X Q. 90. When the interior mills do not pay the New Orleans price, do they pay more than the New Orleans price?

A. Frequently.

X Q. 91. And the New Orleans mills then made the local mills' price?

A. When they would find it out they made it and raised it again, raised back at them.

X Q. 92. They did that regardless of what the freight rate was?

A. Yes, sir; because, as a rule, they would do that where the local mill was going to get the seed.

X Q. 93. How many months in a year does an oil mill have to operate in order to make the business profitable?

A. That is a very variable matter, from five to seven months, depending on the price at which the seed can be bought.

X Q. 94. Take your Baton Rouge mill, what is its capacity?

A. 125 tons a day.

X Q. 95. How many tons of seed did you purchase last season?

A. You mean this season?

X Q. 96. I had better say last season because this season is not over with?

A. Last season we did not start until late and crushed 6,500 tons, starting after January.

X Q. 97. Take this reason then?

A. About 11,500 tons. A normal crush for us is 13,000 tons.

X Q. 98. What has oil been worth?

A. It has varied from 21½ cents to 35 cents a gallon here and 40 cents in Texas, very little as high as 40 in Texas.

206 X Q. 99. Where did you ship your oil?

A. To New Orleans, Cincinnati and sometimes Louisville.

X Q. 100. What has been your average price for it this season?

A. My price has been low. I do not know the average price. It ranges all the way from 21½ cents to 32¼, my last sale.

X Q. 101. What has your cake and meal been worth during this last season?

A. From 23½ dollars to 28¼ per ton.

X Q. 102. And your hulls?

A. From \$3.00 to \$6.00.

X Q. 103. How many gallons of oil do you get out of a ton?

A. It varies from 38 to 41.

X Q. 104. How many pounds of cake and meal?

A. From 900 to 950 pounds.

X Q. 105. And how much of hulls?

A. From 500 to 650 pounds.

X Q. 106. What is the capital invested in your plant?

A. The plant cost \$150,000.

X Q. 107. What are your average operating expenses, compared to earnings?

A. I can hardly make a comparison, because this is the first season the new plant has run the season through.

X Q. 108. What have you paid for seed this season, on an average?

A. I think it has averaged about 13½ dollars a ton.

X Q. 109. That practically represents the price paid by the other mills for seed?

A. Yes, sir.

X Q. 110. And they——

A. The price is variable, from \$11 to \$15.

X Q. 111. An average of about \$13.50 this season?

A. Yes, sir.

X Q. 112. Your mill will turn out just about as much of the manufactured product as the average mill?

A. Yes, sir; about the average, it is one of the big mills.

X Q. 113. Have you examined the proposed tariff of rates that the commission attempted to put in?

A. I have.

X Q. 114. Would that tariff give the New Orleans mill an advantage over the interior mills?

A. I think not.

207 X Q. 115. Would it put the interior mills to any disadvantage?

A. It would not, if the rate on seed and products go in, all three of the rates have to be considered together, all three commodities

X Q. 116. That is if the rate on seed is reduced?

A. The rate on the products should be reduced.

X Q. 117. The rate on products must be reduced?



A. Yes, sir.

X Q. 118. In order to offset the advantage that the New Orleans mills would have on account of being at the point of export?

A. That is the idea.

X Q. 119. The effect of that rate, however, is to make the railway company give the advantage?

A. No; it will preserve about the same parity, but will reduce the freight, but will preserve about the same parity.

X Q. 120. It will reduce the freight on both seed and product?

A. Yes, sir; it will materially reduce the revenues to the railroad company.

X Q. 121. But it is necessary to reduce the rate on the product and reduce the rate on seed in order to give the New Orleans mills, or in order to put the New Orleans mills on a parity with the interior mills?

A. Not so in every case.

X Q. 122. As a general rule, leaving the question of specials out, leaving Cinclair out?

A. There is not a great difference in the parity between the city and the country now, until you get above \$3.00, then New Orleans is practically above \$3.00. Freight is too high.

X Q. 123. How far will a \$3.00 rate carry New Orleans now?

A. I am not certain about the mileage.

X Q. 124. Do you know of any interior mill that can buy seed at a distance of 130 miles in competition with a mill located within half that distance?

A. They cannot.

X Q. 125. Do you know of any interior mill that can buy seed now, at all, on the Texas and Pacific, a distance of 130 miles?

A. In competition—

X Q. 126. With any other mill?

A. No; I do not.

208 X Q. 127. You never had anything to do with the practical operation of a railroad?

A. No, sir.

X Q. 128. You do not know anything about the elements that enter into the operation of local freight as compared with through freights?

A. No; not as a railroad man.

X Q. 129. Did you ever know of a local freight train working stations at night and setting out cotton-seed?

A. I expect it has been done.

X Q. 130. But did you every [ever] know of it being done, working stations at night and setting out cotton-seed?

A. Yes, sir; I have.

X Q. 131. At what point?

A. At Bunkie.

X Q. 132. When?

A. The first two years it was built it would happen, sometimes, when they came in late, I am not sure about that.

X Q. 133. Now, as to the cost of producing cotton in Louisiana. I

believe you testified that it cost more to produce cotton in Louisiana than in Texas?

A. I said I thought so.

X Q. 134. Do you know how the alluvial lands of Louisiana will compare with the Texas lands, in the production of cotton, as to amount?

A. It would depend entirely on conditions, but grass grows much more rapidly in alluvial lands than it does in the Texas hills or prairie lands.

X Q. 135. The cost of labor is greater in the alluvial countries than in the hill countries, in order to keep the crop free of grass?

A. Yes, sir.

X Q. 136. Grass grows much more rapidly, does it not, on the right of way of a railroad in the alluvial lands of Louisiana than it does in the Texas lands?

A. Yes, sir.

X Q. 137. The cost of labor is greater to keep the right of way in the condition, in the alluvial lands of Louisiana than in Texas, does it not?

A. Yes, sir; until you get it ballasted up in the alluvial lands.

X Q. 138. You have been going over the Texas and Pacific Railroad a good deal?

A. Yes, sir.

X Q. 139. Is it not a fact that the Texas and Pacific is constantly bettering its property especially in ballasting, in Louisiana?

A. Yes, sir.

X Q. 140. It has ballasted its Port Allen branch and has also ballasted its main line some distance above Melville, has it not?

A. Yes, sir.

X Q. 141. And it is still ballasting its main line in Louisiana?

A. They are doing a great deal of improvements.

X Q. 142. Do you know, as a matter of fact, that the physical property of the Texas and Pacific, especially its roadway, need a considerable amount of betterments especially in the way of ballast?

A. I never saw a railroad that di [do] not.

X Q. 143. How is it as to the Texas and Pacific?

A. I imagine it needs constant ballasting.

X Q. 144. Is it not a fact that a road in an alluvial country needs a better and heavier ballast than in high lands where it is better drained?

A. I should think so, especially the first 10 or 12 years it is built.

Redirect examination.

By Judge GUION:

R. D. Q. 1. You have stated what mills have been built in the last ten years along the line of the Texas and Pacific, have you not?

A. Yes, sir.

R. D. Q. 2. Will you please state whether there have been other mills, oil mills built in other parts of the state not on the Texas and Pacific?

A. Yes, sir; they have been built all over the state.

R. D. Q. 3. How many oil mills have been built in the City of New Orleans within the last ten years?

A. None. Two have been rebuilt that were burned.

R. D. Q. 4. But no new ones have been built within that period?

A. No, sir.

R. D. Q. 5. How about Gretna?

A. None.

R. D. Q. 6. If the tariff which the railroad commission proposes to put in is carried out and enforced, would it give any preference to New Orleans over the country mills?

210 A. I think not. I think it will make conditions as near equitable between New Orleans and the country as can be arrived at.

R. D. Q. 7. What is the average price paid by the interior mills for cotton-seed brought to their mills to be worked up into oil cake, etc?

A. It varies with seasons and moisture during seasons.

R. D. Q. 8. What has been the average price for the last five years?

A. It has varied from \$9.00 to \$20.

R. D. Q. 9. Do those people along the Texas and Pacific road sell their seed regardless of the price they get for it?

A. They will sell them anywhere from \$8.00 up. I have bought seed on the Texas and Pacific at \$5.00 up, that is 10 years ago.

R. D. Q. 10. They do not hold them?

A. No, sir; they sell them any way.

R. D. Q. 11. Is there any part of the state where they do hold them, along the line—

A. On the V. S. & P. they very rarely sell when they fail to net \$11.00 per ton.

R. D. Q. 12. You state a moment ago, if I mistake not, that you buy not further off than 50 miles?

A. That is as far as I buy on the Y. M. & V. road.

R. D. Q. 13. Now, take your mill, for instance. Could you tell us the difference that the Texas and Pacific Railroad will receive on seed if brought to your mill, as compared with it being brought to Gretna or New Orleans?

A. The amount of seed that we—

R. D. Q. 14. I am speaking now on seed, I am not speaking of the product?

A. You cannot compare with Baton Rouge because we get no seed at Baton Rouge from the Texas and Pacific.

R. D. Q. 15. Well, take for instance, the New Roads Oil Mill. Have you any idea how far from it the purchase of cotton-seed were made?

A. The Atchafalaya River to New Roads, I suppose the farthest distance is about 80 miles.

R. D. Q. 16. You have a mill at New Roads?

A. No, sir; at Batchelor, 18 miles further north.

R. D. Q. 17. Well, at what distance—I thought you spoke of New

Roads as being the place you had a mill—at what distance from Batchelor do you buy?

A. 40 miles is the farthest distance south.

211 R. D. Q. 18. What is the freight charged from the points farthest that you pay into Batchelor?

A. I think it is \$1.75, 8 $\frac{3}{4}$  cents a hundred.

R. D. Q. 19. What is the freight charged that the railroad receives on the product of that ton of cotton-seed after it has been worked up and shipped from that mill at Batchelor to New Orleans?

A. It would be 300 pounds of oil, 45 cents; 900 pounds of meal, 72 cents; 40 pounds of lint, 4 cents, and hulls it would be 48 cents.

R. D. Q. 20. That would then, if I understand it correctly, give the Texas and Pacific Railroad Company on a ton of cotton-seed and its products into Batchelor and then from Batchelor to New Orleans, a revenue of \$3.44, would it not?

A. Yes, sir; if those figures are correct.

R. D. Q. 21. Now, what would be the freight charged that the road would receive on cotton-seed shipped into New Orleans or to Gretna from the same point south?

A. That is a special, that is \$1.50.

R. D. Q. 22. Ought not the freight rate on seed to interior mills and the freight rate on the product of such seed to New Orleans equal the freight rate on seed to New Orleans?

A. Well, no; I should think it would be a little higher.

R. D. Q. 23. Which would be higher?

A. I think that combination rates should be a little higher because the length of time the cars are delayed and things of that kind, extra handling.

R. D. Q. 24. What proportion do you think would be a reasonable difference between the two?

A. That is very variable, but it is worth more you see to ship the cars in and out, there are 4 days one way against two the other; there should be some difference for the billing and handling of two cars of freight instead of one.

By the MASTER:

Q. Is it possible to make any average?

A. I could not make an average difference. It is worth more to furnish the two cars and leave them two days to be loaded and two days to be unloaded, than it would be just to furnish one car; in the one case it takes two cars and in the other case one car. So the service is worth more money.

• By Judge GUION:

212 R. D. Q. 25. Is it not a fact that every point along the line of the Texas and Pacific Railroad, the road gets a very much larger revenue from the interior mills by reason of the fact it gets the outward product; than it does on the seed carried to New Orleans, although the distance on a mileage basis would give the seed carried to New Orleans more money?

A. I think so.



R. D. Q. 26. Would that condition of things continue if the rate the Railroad Commission proposes to put in is enforced?

A. I am not certain, but I think that possibly they would get more revenue if they hauled seed in and out, than if they hauled it direct. You could not make any fixed rule that would not look out of proportion at some particular points.

R. D. Q. 27. But, you stated a moment ago you believed in your opinion of these various tariffs and these charges made for the transportation of seed and the products of seed that the new rule of the commission, that the commission proposes to put in, would be putting the interior mills and the New Orleans mills more on a parity than the present tariff. Did you state that?

A. Yes, sir; I think it will take out a lot of inequalities and it will be fair to all of them. The only sufferer in it would be the railroad company who would get less revenue.

R. D. Q. 28. Now, if the tariff that the Railroad Commission proposes to put in, covering the transportation rates on cotton-seed in the State of Louisiana is adopted and enforced, would there be any discrimination against the interior mills in favor of New Orleans?

A. I think not.

R. D. Q. 29. Does Cinclair get any cotton by water?

A. Very few. They got some last year when the crop was very short.

By the MASTER:

Q. What would be the effect if the rate was higher to Cinclair?

A. They would buy the same seed on the railroad.

Q. Would not that increase their water receipts, have a tendency in that direction?

A. Not necessarily. If they bought too many seed on the river why the New Orleans people would make the price so high, and they can carry them to New Orleans for the same freight rate as they can to Cinclair.

213 By Judge GUION:

R. D. Q. 30. Where does that seed come from that Cinclair gets?

A. You mean rail or river?

R. D. Q. 31. By river?

A. Last year they bought them on the Atchafalaya and Mississippi River. They could buy them anywhere boats are running.

R. D. Q. 32. At river points?

A. Yes, sir.

R. D. Q. 33. Point reached by the Texas and Pacific Railroad?

A. On the Atchafalaya River, on the west bank, the Texas and Pacific parallels the river but the Texas and Pacific Railroad's rates are cheaper than water rates to Cinclair.

R. D. Q. 34. The rail rate on the Atchafalaya?

A. On what they call the Melville Simmesport Branch, paralleling the Atchafalaya River the rates are cheaper than the water rates.

R. D. Q. 35. What I want to learn, if I can, is whether this seed that you say is sometimes brought to Cinclair by boat by means of the

Mississippi River, is brought from points from which it can be shipped by rail?

A. No, sir.

R. D. Q. 36. By the Texas and Pacific, I mean?

A. No, sir.

R. D. Q. 37. You stated a moment ago that a considerable proportion of the seed brought to the mills in New Orleans and I believe you said in Gretna?

A. Yes, sir.

R. D. Q. 38. Was brought by boat?

A. By barges and packet boats.

R. D. Q. 39. By barges and packet boats?

A. Yes, sir.

R. D. Q. 40. Plying the Mississippi River?

A. And tributaries.

R. D. Q. 41. Now, where is the seed brought from?

A. From all points on the Mississippi River south of Greenville, Mississippi, from the Atchafalaya River and from points on the Red River and tributaries.

R. D. Q. 42. Is it shipped from points from which that seed could be shipped by the Texas and Pacific?

A. Very little of it could be moved by the Texas and Pacific.

R. D. Q. 43. You would say then that the seed that is brought to New Orleans by barge and by packet, is brought from non-competitive points, would you?

A. No, sir; considerable seed is brought from competitive points. I should say may be five thousand tons of seed are brought by water that might be brought by the Texas and Pacific to New Orleans.

R. D. Q. 44. Suppose a mill receives 10,000 tons of seed, how many tons of product would it produce?

A. About 92½ per cent. of products.

R. D. Q. 45. How many would it ship?

A. That varies very greatly with localities; in the alluvial lands it would ship probably 75% to 85%.

R. D. Q. 46. And in the non-alluvial lands?

A. In the older territories perhaps 60% to 65%.

R. D. Q. 47. Where does this part of the product go that is not shipped?

A. It is used locally, hauled out by wagons.

R. D. Q. 48. Would the freight rate on the product be greater or less than the freight rate on the seed per mile?

A. You mean under this new tariff or the other?

R. D. Q. 49. Under both?

A. It depends. There are so many factors having a bearing on it you cannot answer that off-hand. While seed moves only short distances the products move long distances to New Orleans.

R. D. Q. 50. Then, according to that there would be more revenue, would there not, received by the railroad on the product than on the seed carried in out of which the product is made?

A. There are varying factors that would have to be figured by the rates.

R. D. Q. 51. Have the river receipts of cotton-seed at New Orleans fallen off in the last four or five years?

A. Yes, sir; materially due to new mills being built on the railroads which parallel the rivers.

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*Bradshaw.*

NEW ORLEANS, *April 30th*, 1907.

GEORGE G. BRADSHAW, witness sworn and examined on behalf of defendants, testified as follows:

Direct examination.

By General MILLER:

Q. 1. What is your name?

A. George G. Bradshaw.

Q. 2. Mr. Bradshaw how long have you been living in the City of New Orleans?

A. I have always lived here, all my life.

Q. 3. What business are you engaged in?

A. I am employed by the Standard Cotton Seed Oil Company.

Q. 4. That is the company which originally made a complaint about the cotton-seed rate before the State Railroad Commission?

A. Yes, sir.

Q. 5. How long have you been with that company?

A. I have been there for 16 years.

Q. 6. Does that company get any cotton-seed from the line of the Texas and Pacific Railway Company?

A. Yes, sir; they do get some.

Q. 7. From what portion?

A. Well, recently we have gotten a little or nothing, in fact, for the last three years; I do not suppose we have received hardly 300 tons of seed a year.

Q. 8. And from what average distance did the seed you did get come over that line?

A. I would say about 150 miles.

Q. 9. Years ago did you get seed in considerable quantities by that line?

A. Yes, sir; we used to receive large quantities of seed from the T. & P. Railroad.

Q. 10. And from what portion of the line, principally?

A. All the way from Alexandria, all stations from Alexandria, south.

Q. 11. How far is Alexandria from New Orleans?

A. I really do not know, I could not swear to the distance, we have not had—

Q. 12. Is it less than 200 miles?

216 A. Yes, sir; it is less than 200. We have not had any business from Alexandria, I guess, for 8 years.

Q. 13. What has been the reason, if any, why your company has reduced its receipts by the T. & P. Railroad?

A. In the last three years the reason the receipts have fallen off so

materially, in fact to nothing now, is we could not compete with the rates that other people have had in there.

Q. 14. What other people do you refer to?

A. Well, the Bunkie mill has an advantage over us and the Cinclear mill, and well, more particularly those mills from certain territories they have an advantage and are in the territory where the Bunkie seed comes over the Port Allen branch and from stations on the main line as far as Bunkie.

Q. 15. Did your mill get any considerable quantity of seed from any branch of the T. & P. in the neighborhood of Avoyelles Parish?

A. On the Avoyelles road?

Q. 16. Yes.

A. Yes, sir; we used to receive large quantities of seed from there.

Q. 17. What was the rate in those days?

A. The rate is practically the same now as it has always been, that is my recollection. We have not had any car seed off the Avoyelles road for a number of years. The rate is practically the same.

Q. 18. Do you know whether or not any reduction was made on that line to local mills?

A. No; I am not familiar with the rate prevailing to the Long Bridge mill or Bunkie. I do not know what kind of a rate they have in there.

Q. 19. On the Port Allen branch, how does the rate now in force to New Orleans, compare with the rate you had previously?

A. It is about double. We used to pay \$1.50 a ton from all stations on that Port Allen branch.—

Q. 20. Of the Texas and Pacific Railroad?

A. Yes, sir.

Q. 21. And what is it now?

A. They are working on a mileage basis there, it is from 14, I think, to 17 cents a hundred pounds.

Q. 22. When was the rate you speak of taken out?

A. I think it was taken out in 1904.

Q. 23. And do you know the cause of it?

A. Well, I do not know that I can swear to the cause of it.

217 Q. 24. Did you ever take it up with the traffic managers of the Texas and Pacific Railroad?

A. I suppose that there must be some letters in the office where we protested against the advance in the rate. I understand that the rate was taken out in the interest of Mr. Fitzhugh, the New Roads mill.

Q. 25. When was the New Roads mill established?

A. I think in 1902.

Q. 26. How far is the New Roads mill from the main line of the Texas and Pacific?

A. From the main line, well, I do not know, you see I have not paid any attention to this business for the last two or three years, because we took our men off the road when the rate was raised from \$1.50 to anywhere from \$3.00 to \$3.40, there was no use in our keeping anybody there, we could not do any business, we could not



compete and I have not paid any attention to that territory. From New Orleans to stations on that line it is somewhere from 120 to 140, about 150 miles.

Q. 27. Well, now, their present rate for distances of 120 miles, as I understand, is  $14\frac{1}{2}$  cents a 100 pounds, which would be \$2.90 a ton?

A. Yes, sir.

Q. 28. The commission's rate, which is in question here for that distance, is 9 cents a 100 pounds or \$1.80 a ton; for distances of 130 miles the railroad tariff is 15 cents per 100 pounds or \$3.00 a ton; the proposed commission's rate is  $9\frac{1}{2}$  cents per 100 pounds or \$1.90 a ton; for distances of 140 miles the railroad's rate is  $15\frac{1}{2}$  cents per 100 pounds; the commission's proposed rate is  $9\frac{1}{2}$  cents per 100 pounds; for distance of 150 miles the railroad rate is 16 cents per 100 pounds and the proposed commission rate is 16 cents per 100 pounds. For distances of 100 miles the railroad rate is  $16\frac{1}{2}$  cents per 100 pounds and the proposed commission rate is 11 cents per 100 pounds. For distances of 170 miles and up to 180 miles the railroad rate is 17 cents and the proposed commission rate is 12 cents per 100 pounds. For distances of 180 miles the railroad rate is  $17\frac{1}{2}$  cents per 100 pounds and the commission's proposed rate is 13 cents per 100 pounds. For distances of 190 miles the railroad rate is  $17\frac{1}{2}$  cents per 100 pounds and the proposed commission rate is 14 cents per 100 pounds. And for distances of 200 miles the railroad rate is  $17\frac{1}{2}$  cents per 100 pounds and the proposed commission rate is

218  $14\frac{1}{2}$  [cents] per 100 pounds. The maximum rate of the railroad begins at 180 miles and is  $17\frac{1}{2}$  cents a 100 pounds for any distance after that, and the commission's proposed maximum rate begins at over 200 miles and is 15 cents per 100 pounds. I would like to ask you, in the first place, whether or not this railroad schedule of rates on cotton-seed keeps your mill, as a buyer, out of the territory within those distances, practically?

A. Well, it keeps us out, yes, sir; we cannot afford to pay the rates that the T. & P. charge, because we can go in other territories and move seed the same distances for considerably less money.

Q. 29. By rail?

A. By rail; yes, sir.

Q. 30. What about getting an adequate supply from other territories?

A. We always want more seed than we have, in a general way, and it is a hardship that we are cut off from the T. & P. Railroad. If we could work the T. & P. we could increase our receipts.

Q. 31. Was the object of your company in making complaint to the commission against these rates to enable you to get into a territory where your ability to secure supplies would be increased?

A. Yes, sir.

Q. 32. I would like to ask you whether you are able to say that if the commission's rates as stated here, or any substantial reductions were made in the railroad rates, your company would buy seed freely in that territory?

A. Unquestionably.

Q. 33. Are you able to say whether or not the manufacture of

cotton-seed has been conducted on a narrow margin for the past half dozen years in this city?

A. Well, yes; and more particularly for the past three seasons. There has been no money in the business at all for the past three seasons.

Q. 34. How many cotton-seed oil mills are there in New Orleans?

A. There are five in operation.

Q. 35. Are they large mills?

A. Yes, sir; some of them are large mills.

Q. 36. Do you know what is the combined capacity of the cotton-seed mills in New Orleans?

A. No; I could not say what the capacity is.

Q. 37. How does your mill compare with other mills in this city. When I say this city, I mean to include Gretna across the river?

219 A. Our mill has 125 tons capacity a day, and the Union and Southern are both much larger mills than ours.

Q. 38. And how about the Columbia?

A. The Columbia mill is—my impression is—its capacity is 100 tons a day.

Q. —. And then this Lawler mill?

A. This Lawler mill, that is a small mill, about 40 or 50 tons.

Q. 40. Do you know whether or not the oil mills of New Orleans have had any serious difficulty in securing adequate quantities of seed for their operations during the past several years?

A. Yes, sir.

Q. 41. Are you able to say whether or not the other mills would become buyers along the T. & P. Railroad, in a territory extending up to the neighborhood of Alexandria, say, which I understand to be 194 miles from New Orleans, if the freight rates admitted of it?

A. I cannot say, except in a general way, that all the oil mills here are always anxious for seed, and if they could get a rate, if they could see a profit, they certainly would go out and get the seed, it does not make any difference where the territory is.

Q. 42. Have you ever heard the traffic representatives of the Texas and Pacific Railroad assign reasons for taking off the lower rate or for holding up the present rates on that line, and if so what were they?

A. Their contention—

By Judge FREEMAN:

Q. What do you mean by their contention, mention the official so we can locate him.

A. I do not know—when the hearing was had before the commission in Baton Rouge, I think Mr. Braggins took the position that the country mills had to have a low rate, they ought to have some advantage because they were the people that built up the local business for the railroad, as the railroad not only got the haul of the seed in but the haul of the product out, and for that reason they considered they ought to have some advantage on the raw material going to the mill. It is some time ago, it was 1904 I think, my impression

is it was Mr. Braggins that gave that as his reason why the country mills should have some advantage in the rate.

220 By Judge GUION:

Q. 43. You were present at the hearing before the commission?

A. Yes, sir; when this case first came up there was a hearing in this city around at the Progressive Union Hall.

By General MILLER:

Q. 44. Do you know whether it is true that numerous representatives of the interior mills appeared before the commission and favored the railroads' side of the controversy?

A. Yes, sir; in Baton Rouge they had not only mill men there, but planters and merchants and people from the interior.

Q. 45. The railroad company claimed, did they not, that not only were they justified in building up and caring for local industries along their line, and thereby increasing their traffic of all sorts; but that if the seed were taken to the local mills in the interior and manufactured they would get the haul out of the product, whether of oil or cake or meal or hulls; whereas, if the seed were brought to New Orleans they would only get the freight on the seed and only a limited quantity, if any, of the manufactured product that went over the line. Do you remember whether or not that was their contention?

A. Yes, sir; that was one of their contentions.

Q. 46. And do you remember whether or not it was claimed that the interior mills were entitled to have a parity, so-called, maintained between themselves and the seaboard or New Orleans mills?

A. Yes, sir; they claimed they had to pay the freight on the product out, and consequently they ought to have a lower rate on seed going to the mill.

Q. 47. Are you prepared to say, from observation or current information on the subject, what proportion of the seed the interior mills consume are obtained by wagons in their own localities?

A. I have heard it said it was 30% of the seed. But I am not in position to say just exactly what it is, but I have been told it was 30%.

Q. 48. You are not exactly in position, you say, to say?

A. No, sir.

Q. 49. I suppose from the very nature of things that large quantities of seed would come by wagons to the mills in the neighborhood of where the seed are produced?

A. Yes, sir.

221 By Judge GUION:

Q. 50. That condition of things does not exist in New Orleans and Gretna?

A. No, sir; there is no wagon seed here at all.

Q. 51. At either place?

A. No, sir.

By General MILLER:

Q. 52. Are you aware of any reason that would justify a lower proportionate rate to Cinclair or the Cinclair mill which would not apply to New Orleans?

A. No; except that the railroads' contention is that they get the haul out of the product, that is the only thing that I know.

Q. 53. Is not Cinclair on the Mississippi River?

A. Yes, sir.

Q. 54. The railroad would have to compete with the steamboats bringing that product from Cinclair to New Orleans?

A. Yes, sir.

Q. 55. What is done with the products of the seed that your mill manufactures in New Orleans?

A. Well, the oil is all sold here, locally. The cake is exported and what cake we grind into meal the most of it is sold to the Standard Guano Company, the Standard Guano Company is one of the affiliated concerns connected with the Standard Cotton Seed Oil Company, and they use it in their fertilizer formulas.

A. 56. In Louisiana?

A. Well, it goes everywhere, where we sell fertilizers. It goes into certain brands that we make.

Q. 57. The Standard Guano Company is affiliated with the Standard Cotton Seed Oil Company?

A. Yes, sir.

Q. 58. Well, do you know whether or not any of the products of the seed manufactured by your company, which go to the Standard Guano Company and then take the shape of fertilizers go out over the T. & P. Railroad in the course of business?

A. Yes, sir; a lot of it goes to Louisiana and Texas and Arkansas.

Q. 59. So, that is a mistake to suppose that the product of these seed brought to New Orleans, is lost to the railroad as a transportation proposition, entirely?

A. In the case of our mill it would be.

222 Q. 60. Do you know anything about the lard traffic over the T. & P. Railroad by the Southern Cotton Seed Mill?

A. Well, only what I heard them say they ship out immense quantities and I suppose a great deal must go over the T. & P., naturally.

Q. 61. The commission's rate proposes an average reduction from points along the T. & P. at distances running from 120 to 200 miles, of 4 9/10 cents per 100 pounds or 90 8/10 cents per ton. I would like to ask whether you are prepared to state from your knowledge of your own business and of the cotton-seed business at New Orleans, there would be a substantial movement of cotton-seed to this city over that line if those reductions should take effect?

A. I am satisfied there would be; yes, sir.

Q. 62. If this reduction should result in a corresponding raise in the price of seed in the interior, who would get the benefit of that?

A. Well, the man that raises cotton, the planter.

Q. 63. Are you able to state, in dollars and cents or do you care to state, what, in dollars and cents, has been the average profit per



ton from the manufacture of cotton-seed at New Orleans for the past half dozen years?

A. No; I could not say that off-hand; no, sir. Of course, we have records at the office, and they would show it, but I could not off-hand say what it would be.

Q. 64. How many months in the year, does your mill run, normally, when you have an adequate supply of seed?

A. From about the middle of September to the middle of May, when we have seed.

Q. 65. When you say you have a crushing capacity of 125 tons a day, does that involve a 24 hours operation?

A. Yes, sir.

Q. 66. And during the cotton-seed season, when you have adequate supplies of seed, do you run day and night?

A. Yes, sir.

Q. 67. Do you shut down on Sunday?

A. Yes, sir; we shut down Saturday night at 12 o'clock.

Q. 68. Say 26 days to the month you would crush a considerable quantity of seed?

A. Yes, sir.

Q. 69. Are you familiar with the rates on cotton-seed to New Orleans from other territory and by other railroads, to any extent?

A. Well, we get a good deal of seed off the Y. & M. V. Railroad, and the rate along there as far as we really go after business is \$2.00 a ton, from 146 and 150 miles.

Q. 70. Do you go as high as Centreville on that road?

A. Yes, sir.

Q. 71. Now, the line of that road from Slaughter in Louisiana and beyond, until you get to the neighborhood of Vicksburg, Mississippi, is some considerable [distance] from the Mississippi River?

A. Yes, sir; quite a distance.

Q. 72. So, that the rates could not be seriously affected by water competition?

A. No, sir; seed would not be moved that distance to come to the river.

Q. 73. What is the river rate on seed from Vicksburg south, Vicksburg being 400 miles——

A. From Vicksburg?

Q. 74. I do not take the town of Vicksburg, but from points south of Vicksburg?

A. \$2.25 a ton.

Q. 75. How far down does that rate extend?

A. We pay \$2 from landings south of Red River to New Orleans and then from Red River to Vicksburg \$2.25.

Q. 76. Do you know whether or not that rate was the result of an agreement made in order to induce the New Orleans and Vicksburg Navigation Company to keep in adequate transportation facilities for a certain length of time?

A. Yes, sir; that was the understanding.

Q. 77. Do you know what the rate is by the New Orleans and Northeastern Railroad, for distances up to 150 miles?

A. \$2.

Q. 78. That is, a ton, \$2 a ton?

A. \$2 a ton.

Q. 79. Is there much movement by the New Orleans and North-eastern to this city?

A. We have not made any special effort to get that business over there.

Q. 80. What about the Illinois Central, do you know what its rate for distances up to 150 miles, is?

A. On that road we have not operated for a long, long time. I think the rate is about \$1.60 a ton.

Q. 81. Well, now, when you get cotton seed from along the line of railroads, how do you handle it generally?

A. Well, it is switched to the factory by the L. & N. railroad.

224 Q. 82. That is on arrival here?

A. Yes, sir; on arrival here.

Q. 83. In other words, you have switch connections with the whole system of railroads that come here?

A. Yes, sir; we can get seed to our factory from any road coming to New Orleans.

Q. 84. But I spoke about points of shipment. How do you handle seed as a rule. When you buy seed in the interior how is it handled, as a rule along the railroad?

A. We send our traveling men out and they buy it and the man we buy from loads and ships it in.

Q. 85. He loads the car and ships it in?

A. Yes, sir.

Q. 86. And who unloads it?

A. We do.

Q. 87. Has it been the practice of your company to establish warehouses to receive and handle seed at stations along the railroad?

A. We used to have them.

Q. 88. Did you ever have any on the T. & P. railroad?

A. Yes, sir; we had warehouses on the T. & P. and on the Avoyelles branch.

Q. 89. Were they discontinued when this rate was taken out, you spoke of?

A. We have not had those warehouses for several years.

Q. 90. And what is the switching charge at New Orleans for transferring seed from the terminals of the Texas and Pacific Railroad to your mill?

A. The L. & N. switching charge is \$1.50 per car.

Q. 91. Does that include the cost of bringing the seed from Gretna?

A. Well, the T. & P. makes the delivery to the L. & N.

Q. 92. On this side?

A. Yes, sir.

Q. 93. Is there any extra charge on that account?

A. No, sir; unless they figure the transfer in their rate, I don't know, it does not show.

By Judge GUION:

Q. 94. That \$1.50 per car is how much a ton?

A. They switch a car with a maximum of  $12\frac{1}{2}$  tons for \$1.50, and every month we make up a statement and which is known as a switching statement, for the L. & N. showing the actual weight of the cars we received, and we pay them at the rate of \$1.50 for every  $12\frac{1}{2}$  tons of cotton seed or anything else, moved to our factory.

By General MILLER:

Q. 95. In your experience in this cotton seed business, have your claims against the railways for loss or damage in transit been considerable, or not?

A. Well, hardly worth mentioning. I do not remember more than about three instances where we ever had a claim against a railroad for any loss or damage on seed.

Q. 96. Have you known of any case of spontaneous combustion in seed or anything of that sort?

A. No, sir; the seed gets hot in a car, but I never heard of it really catching fire. I think it is impossible.

Q. 97. What sort of cars are generally used in the transportation of seed.

A. Boxcars.

Q. 98. Any kind of boxcars—there is no special equipment?

A. No, sir; there is no special equipment; they moved them in good boxcars. You could not use any leaky roof cars.

Q. 100. This cotton seed generally comes in bulk?

A. Yes, sir; ordinarily.

Q. 101. It is just shoveled from the warehouse, as a rule, into the cars?

A. From warehouses or loaded from wagons, it depends on what facilities the people have.

Q. 102. And are they unloaded promptly, the cars, on arrival?

A. Yes, sir.

Q. 103. What complaints do the railroads make against you for demurrage on cars?

A. We very seldom, if any, have to pay a car service bill, once in a while we do, but we always try to handle our business promptly.

Q. 104. Your rule is, then, to give dispatch to the unloading of the cars that come in to your factory?

A. Yes, sir.

Q. 105. Do you know whether the rate by the Southern Pacific Railroad to New Orleans is lower or higher than the rate of the T. & P.?

A. The Southern Pacific have a rate of \$3 a ton from all stations on the main line, and \$3.25 a ton from the St. Martinsville Branch.

Q. 106. Is that their highest rate that you know of?

A. Yes, sir.

Q. 107. And how far up the Southern Pacific does the movement of seed begin?

A. About 120 miles—well, there is some seed now, in the last two or three years, they have been raising seed down in the neighborhood—

Q. 108. I speak of a substantial movement?

A. 120 miles.

Q. 109. That is above Morgan City?

A. Yes, sir.

Q. 110. The L. & N. does not bring seed to New Orleans?

A. No. We have not had any seed off the L. & N. for years.

Q. 111. Do you know what rates have been established by this new road that has come in here lately?

A. The L. R. and N.?

Q. 112. Yes?

A. \$2.50 for stations south of Angola and \$3 north of Angola, except Shreveport; they have a special rate from Shreveport.

Q. 113. How far is Angola from New Orleans?

A. By that road?

Q. 114. Yes?

A. I do not know how far it is to Angola.

Q. 115. Do you know how far above Baton Rouge it is?

A. I suppose Angola must be by that road, something like about 140 miles, I should think. The business movement of that road this season has been down at stations south of Baton Rouge.

Q. 116. The folder and time table of that road puts the distance as 129 miles to Angola?

A. Yes, sir.

Offer—General MILLER: We will offer in evidence as part of the testimony of this witness to be marked D-14 the time table and railroad guide showing distances of the railroad referred to, the Louisiana Railway and Navigation Company.

Q. 117. You say the \$3 rate applies from what point?

A. From stations north of Angola.

Judge FREEMAN: What is that distance to New Orleans?

General MILLER: It seems to be 129 miles to Angola. It is 227 176 from Angola to Shreveport and it is 395 from Shreveport to New Orleans. It is 129.3 miles from Angola to New Orleans. To Alexandria it is 183 miles.

Q. 118. That applies to all intervening stations?

A. Yes, sir.

Q. 119. That is a new road?

A. Yes, sir; the road has just been opened, it was opened late in the last season, in that season we did not do any business with it because they were not ready to handle the business.

Q. 120. You expect to do business over that road during this coming season?

A. Yes, sir.

Q. 121. That rate will allow you to do some business over that line?

A. Yes, sir; we can do some business.

By Judge GUION:

Q. 112. Is not there considerable shipment of cotton seed from Gonzales over the line of that L. R. & N.?



A. Yes, sir; we get a lot of seed from Gonzales, Edenborn, they call it.

Q. 123. What is the distance to Gonzales?

A. By that road, I do not know; I suppose it is about 65 miles.

Q. 124. You say that the rate from Angola prevails south to New Orleans at all intermediate stations?

A. Yes, sir.

Q. 125. Prior to the adoption by the Railroad Commission of the order that is contested, had you had any connection with the matters concerning the adoption of that rate or the tariff of rates had you considered them at all?

A. Well, yes; I had looked into it, and had made up some memoranda showing the rates we paid and the way the business had dwindled. Our question on the rate came up in the first instance on points north of Ferriday, we wanted to do some business up in the neighborhood of St. Joseph and Waterproof and stations in there, and the railroad wanted to put in a rate of \$4.20 a ton.

By Judge FREEMAN:

Q. What railroad was that?

A. We call it the M. H. & L. They wanted to put in a rate of \$4.20 a ton, and we thought \$3 was as much as we ought to pay and if we could get a rate of \$3 we could do some business.

228 By Judge GUION:

Q. 126. I say, did you study this question as to what ought to be a proper rate *per* [on] the Texas and Pacific line prior to your going to Baton Rouge and appearing before the Railroad Commission?

A. Well, I thought that the T. & P. ought to be able to handle the business on a parity with these roads on the east bank.

Q. 127. Which ones do you refer to?

A. The Valley road or the Northeastern or the I. C. Their rates are all lower than the T. & P.

Q. 128. Is there any difference in the character of the country through which these roads travel, as compared—comparing the I. C. and the Mississippi Valley and the Northeastern with the Texas and Pacific, that you know of?

A. Well, the T. & P. I should imagine goes through a flatter country, but I would not think there would be much difference as far as—do you mean building the road, cost of operation—

Q. 129. Cost of operation, yes; and the topography of the country?

A. I should not think it would cost the T. & P. any more than the Valley to operate.

Q. 130. It goes through the same character of country?

A. Practically the same. The T. & P. may have more swamp, then again the Valley has a few small grades.

Q. 131. So that at the time that you began the preparation of what you considered would be a proper rate for the Texas and Pacific to put in, there were lower rates at that time on the Yazoo

and Mississippi *Valey* [Valley], the Illinois Central and the North Eastern?

A. Yes, sir.

Q. 132. Do you know the distance from New Orleans to Norwood on the Yazoo and Mississippi Valley?

A. That particular station we do not get any seed from, I think.

Q. 133. Do you get any from Wilson?

A. We have had two or three cars from there. I think it is about 120 miles to Wilson. Most of our seed on the Valley road comes from Zacharie and stations close by.

Q. 134. Do you ever get any cotton seed from Gayden?

A. No, sir. Most of our seed comes from Slaughter and Zacharie and points on the Bayou Sara Branch and from Jackson, Mississippi. We pay \$2 from Slaughter and Zacharie and  
229 those stations right in there close by, within a radius of 15 or 20 miles, a \$2 rate.

Q. 135. Where do you get your seed from on the North Eastern road?

A. I do not guess we have had any seed at all from the North Eastern, we get it from about Hattiesburg, but we have not paid any attention much to the North Eastern because it would require a man there all the time and the company thought they could use a man to better advantage in another territory where he could get more seed.

Q. 136. What road have you been getting your principal seed over?

A. Most of the railroad seed we get is over the Valley road.

Q. 137. The Yazoo and Mississippi Valley railroad?

A. Yes, sir; we get some little off the M. L. & T., but our principal receipts are off the river.

Q. 138. What is the maximum rate you have been paying on the Valley road?

A. We did some seed from over on that road, \$2.60 I think was the highest rate we paid and that was for some seed that came off the Bayou Sara Branch.

Q. 139. Did you mention the rate on the main line?

A. \$2 a ton.

Q. 140. The maximum?

A. No, sir; not the maximum, but that is the rate we pay in the territory we operate.

Q. 141. Maximum in Louisiana territory?

A. No, sir; because after you get to Jackson, Louisiana, you have to pay \$2.50, but that is on the Branch line.

Q. 142. That is not on the main line?

A. No, sir.

Q. 143. I am asking about the main line?

A. The main line, \$2.

Q. 144. Is that a branch of the Valley?

A. What?

Q. 145. That line to Jackson?

A. No, that is some kind of a private line, as I understand it, I don't know exactly——

Q. 146. And the Bayou Sara——

A. —whose it is, who it is owned by, but my impression is it is some kind of a private line.

Q. 147. And the line to Bayou Sara, is that a part of the main line, a branch?

A. It is a branch of the Y. M. & V. road.

230 Q. 148. What is the rate from Clinton?

A. \$2.

Q. 149. That is a branch line, is it not?

A. Yes, sir; we have not had any seed for a long, long time from Clinton.

Q. 150. I understood you a moment ago to say that you had considered this question as to what ought to be a reasonable rate for the transportation of seed to stations over the Texas and Pacific, and you gave this matter some thought prior to the time you went before the commission and made complaint. Is that correct?

A. Yes, sir.

Q. 151. From the examination that you made of the subject, did you reach a conclusion, or not, that the commission's rate, as proposed, would be a reasonable rate for the transportation of seed over the Texas and Pacific to New Orleans and Gretna, the proposed rate?

A. Yes, sir; I did, I think it would.

Q. 152. Will you likely give us your reasons for believing that?

A. I believe it because the other roads are able to handle the stuff at practically the same rates. Our seed over the Texas and Pacific road, I suppose the average haul on it would be 150 miles, and taking that average I think that ought to pay the railroad pretty well to handle the seed.

Q. 153. Did you take into consideration or into account the question, whether or not at the old rate, as now in force, under which the road is now operating, you could or could not get into the territory now covered by the local mills?

A. At the present rate?

Q. 154. Yes.

A. Well, we are shut out of a great deal of the territory now at the present rate.

Q. 155. You took that into account in determining whether the rate as proposed would be a reasonable one?

A. Yes, sir.

Q. 156. Have there been any new mills built up in New Orleans within the last few years?

A. No, sir.

Q. 157. When was the last mill that you can recall, built in New Orleans, oil mill?

A. Well, the New Orleans Cotton Seed Oil Manufacturing Company's mill, about 10 years ago.

231 Q. 158. Has the quantity of cotton seed brought to the mills in New Orleans increased or diminished within the last few years?

A. It has diminished materially.

Q. 159. What has been the difference in the falling off at your mill?

A. In our mill?

Q. 160. Yes?

A. In the last five or six years?

Q. 161. Yes?

A. Well, something like 18,000 tons a year. We get this year about 9,000 tons.

Q. 162. Has there been any decrease in the production of cotton along the line of the Texas and Pacific Railroad, that you are aware of?

A. Not that I know of.

Q. 163. Has there not, on the contrary, been an increased production?

A. Yes, sir.

Q. 164. To what do you attribute the fact there has been this falling off in the receipts of cotton seed at your mill?

A. Well, we used to market off the T. & P. railroad. I have not looked at the figures for a long, long time, but I think I could safely say we used to market 4,000 tons of seed off that road.

Q. 165. You say that you did get, ordinarily, an average of 4,000 tons of cotton seed over the T. & P. railroad?

A. Somewhere in that neighborhood, we used to get.

Q. 166. Can you state now, how much you get over that road?

A. Last year and year before last, I do not think we got over 250 tons.

Q. 167. Both year before last and last year?

A. Yes, sir.

Q. 168. Can you state whether or not the Texas and Pacific railroad runs through the best cotton producing country of Louisiana?

A. I should think it did; yes, sir; on the whole, taking the line of the T. & P. in Louisiana, I think it runs through the best cotton producing country.

Q. 169. There is more cotton produced along the line of that road than any other line running into New Orleans?

A. Yes, sir.

Q. 170. Did I understand you to say a moment ago, that in addition to the cost of transportation on cotton seed to New Orleans you have to pay a switching charge of 12 cents a ton?

232 A. Yes, sir.

Q. 171. The mill pays that charge?

A. Yes, sir.

Q. 172. In addition to the charge that it pays the transportation company for bringing the seed in?

A. Yes, sir; that is the switching charge of the L. & N.

Cross-examination.

By Judge FREEMAN:

X Q. 1. Your mill is located in New Orleans?

A. Yes, sir.

X Q. 2. And you have been connected with the mill some 15 or 20 years?

A. 16 years.

X Q. 3. Are you familiar with the practical operation of an oil mill, and by practical operation I mean as to the amount of manufactured product to be turned out from a ton of seed?

A. Well, I am not a practical oil mill man, but I make up the records in the office every year of the product per ton. I keep all such records.

X Q. 4. From a ton of seed, first, how much cake or meal is obtained?

A. They figure in a ton of seed, 750 pounds.

X Q. 5. And how much oil?

A. The figure is 40 gallons, and  $7\frac{1}{2}$  pounds to the gallon.

X Q. 6. And how much hulls?

A. About 800 pounds of hulls.

X Q. 7. Then you get a few pounds of linters, how much linters?

A. About 22 or 23 pounds of linters.

X Q. 8. Do you know the cost of working up a ton of seed, the average cost of working up a ton of seed, say taking this season?

A. No, I do not know; that is a question that is hard to answer. It varies a whole lot. You have a lot of fixed charges and of course if you are only working 8,000 tons of seed it will cost you a good deal more in proportion than if you had worked 14,000 or 15,000.

X Q. 9. Do you know the cost of working up a ton of seed?

A. No, sir; it varies. There are records in the office that would show what it has been at our mill.

X Q. 10. There are no local seed originating in New Orleans?

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A. No, sir.

X Q. 11. And your nearest territory for a supply of seed on the Texas and Pacific Railroad, as I understand you to say, would be about the distance of 150 miles?

A. Well, no, we would commence to get seed at Plaquemine, about 85 miles away, but I should say that it would average something between 140 and 150 miles.

X Q. 12. Take the distance, from 85 miles to 200 miles on the Texas and Pacific railroad, there are located in that territory a large number of what you call the interior mills?

A. Yes, sir.

X Q. 13. And I understand you to say these interior mills, on account of being located in the producing territory have these advantages—first, as to the rail haul they are nearer the producing territory, and pay a less rate in on their seed, that is one advantage, they are nearer the producing territory, pay less freight. Another advantage then is that a large amount of wagon hauled seed are received by the local mills that are not received by the New Orleans mills. Now, both of those advantages grow out of the fact that the local mills are located in the producing territory. Is not that so?

A. That is right; yes, sir.

X Q. 14. You found that condition existing when you commenced





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to figure upon a rate to present to the commission. That is the condition you faced?

A. Yes, sir.

X Q. 15. And what you wanted to do was to put your mill in New Orleans upon a parity with these interior mills?

A. Only as far as the rate goes.

X Q. 16. I say, you wanted to put the interior mills on a parity with the New Orleans mills, or rather, the New Orleans mills on a parity with the interior mills. That was your purpose?

A. Yes, sir.

X Q. 17. And the way you proposed to offset these physical advantages possessed by the interior mills, was to reduce the freight rate to New Orleans. That is the way you figured?

A. We wanted to get a rate that would be the same to everybody.

X Q. 18. In other words, you proposed to offset your physical disadvantages by making the railorad [railroad] company take it out of their rate. That is the cold proposition?

A. No. What we object to is, that the railroad company will haul for one mill a greater distance for the same rate than they will for another. What we object to principally is that we  
234 have to pay more money, a greater rate, than the interior mills pay.

X Q. 19. Does not that grow out of the fact that you are further away from the seed?

A. Naturally.

X Q. 20. Then you want to offset that advantage that the interior mill has by its nearness to the seed, by the company giving you a rate that would enable you to get seed practically on the same basis as the interior mill gets the seed. That is true or not?

A. We want a chance to get in on what we consider is a fair rate, and our contention is that if the railroads on the east bank can handle seed at a low rate that the T. & P. ought to be able to handle it at the same rate.

X Q. 21. In making these estimates that you presented to the commission as to the cost of operation of railroads and what is a reasonable rate, did you make a careful examination as to the financial condition of the railroads on the east side and then a careful investigation of the financial condition of the railroads on the west side, also the character of country the roads went through and the cost of maintenance, etc.? What did you go into in order to convince you that the rates you presented to the commission were reasonable rates?

A. I did not pretend and do not pretend now, to be a traffic man, but what the contention was then and is now, is, that if the Y. M. & V. Railroad and the I. C. railroad and the North Eastern railroad, can handle seed at the rates they have in, I do not see any good reason why the T. & P. cannot.

X Q. 22. That is the only reason then you had for asking a reduction of rates to New Orleans over the T. & P.?

A. Now we objected to some difference in the tariff that gave the interior mills—some of the interior mills particularly Bunkie and

Cinclair, an advantage over New Orleans that we did not think ought to exist.

X Q. 23. Don't you think that an interior mill that has only to haul its seed a maximum distance of 40 miles, should have a lower rate on seed than your mill that would have to haul it a distance of 150 miles?

A. Why, of course we do not want the railroads to haul it 150 miles for the same rate that they would haul it 40 miles for.

X Q. 24. I am not talking about railroads; I am talking about an interior mill having the advantage of this difference in distances?

235 A. If they haul it 40 miles for one man I think they ought to haul it 40 miles for anybody else.

X Q. 25. Then it would not be fair to the interior mill, for you to have a rate by which you could haul seed 150 miles and put you on a parity with the interior mill who only had to haul the seed 40 miles. Any rate that would do that would not be a fair rate to the interior mill, would it?

A. No, sir; I do not think that would be fair.

X Q. 26. If there were sufficient amount of interior mills whose average haul would be even 50 miles to consume all the seed in that territory, and you then had to haul it 150 miles from that territory, those mills would take all the seed and you could not get the seed at all?

A. Of course.

X Q. 27. As a fact, does not that exist now, and is it not that why your mill went out of the seed business on the Texas and Pacific, the fact that the interior mills, owing to their location in the producing territory, had an advantage over you in the matter of buying seed?

A. The Cinclair and Bunkie mills particularly have an advantage over us and over everybody else too; it looks like the tariff is made up particularly to foster and protect those two mills.

X Q. 28. Are those two mills located so as to get water rates?

A. The Bunkie mill is not.

X Q. 29. What is the distance from here to Bunkie?

A. 162 miles.

X Q. 30. Do you think you ought to be entitled to go into the interior within a radius of 20 miles of Bunkie and get seed and ship it to New Orleans and manufacture the product, upon an equality with Bunkie?

A. What do you mean, in rate?

X Q. 31. Yes, in rate.

A. Well, yes, if Bunkie—we want to go as far from the mill at the same rate as Bunkie can go.

X Q. 32. Can Bunkie go to New Orleans to buy your seed?

A. Oh, no.

X Q. 33. Then why should you want to go to Bunkie to buy its seed?

A. There is no seed in New Orleans for sale.

X Q. 34. In other words, Bunkie is in a territory where seed is purchased?

A. Yes, sir.

236 X Q. 35. And you want to be put in that territory in competition with the Bunkie mill?

A. My recollection is that Bunkie can go on the Port Allen Branch and buy seed and take it to their mill for \$1.25 a ton.

X Q. 36. When did you investigate that fact?

A. I have not had occasion to look into this thing carefully at all. I did not know this case was coming up and did not go—

X Q. 37. That is a mistake about the rate you mention there. But the rates will show for themselves. What I want to ask you about that—I understood you to say a while ago that what brought up this application to the Louisiana Railroad Commission for reducing rates was that you wanted to get into the interior around St. Joe and what other point?

A. Anywhere from Ferriday up to St. Joe.

X Q. 38. Ferriday is about 200 miles from here and St. Joe in a territory about 250 miles. But they wanted to charge you at the rate of \$4 a ton—

A. \$4.20 from points north of Shreveport.

X Q. 39. And you think if you could get a rate of \$3 you could operate in that territory?

A. Yes, sir.

X Q. 40. Now, St. Joe and those places on the M. H. & L. would have required what is called a joint rate, in order to get your seed into New Orleans?

A. Yes, sir.

X Q. 41. But if you could obtain a \$3 rate you could have operated in that territory?

A. At that time we think we could, that was in 1904.

X Q. 42. What is the boat rate along that territory, to New Orleans?

A. In that territory now?

X Q. 43. Yes?

A. From Natchez to Vicksburg it is \$2.25 a ton. From Red River to Vicksburg—

X Q. 44. You could have afforded to have bought seed and shipped it to New Orleans, within that territory at \$3 a ton and in addition to that paid a switching charge of 12½ cents a ton after it got to New Orleans?

A. Well, at that time we thought we could, you see that was in 1904.

X Q. 45. What advantage now has a New Orleans mill over the interior mill in the matter of shipping out its product?

237 A. Well, it varies with the location of the mill. The Columbia mill and the Union and Southern mills, their mills are located on the river. I do not know what it costs them to make a delivery to the ship's side. But where out [our] mill is, it costs us to make a delivery at Chalmette about 65 cents a long ton. When we deliver up at Stuyvesant dock the charge would be just about the same.

X Q. 46. That is because your mill is not located on the river?

A. Yes, sir.

X Q. 47. Now, the mills that are located on the river they pay no such charge as that?

A. I do not know what it would cost them to make delivery. Of course they can get a steamer to come right to their wharves at very little expense, but I think in most instances their stuff has to be put on barges and given to the ship at her berth and make delivery there.

X Q. 48. But you pay no rail freight rate on your product at all?

A. This charge of 65 cents a ton is for switching and handling charges.

X Q. 49. Do you want the interior mills to make good that expense by the railroads of getting your product down to Chalmette, did you figure that too?

A. What, that the railroad company should pay——

X Q. 50. Yes, should pay it out of their rates?

A. No, sir.

X Q. 51. Or that the interior mills should also make it good?

A. No, sir.

X Q. 52. Do the interior mills have to pay the same charge that you have to pay to Chalmette if they ship there, and also the unloading charge if their stuff arrives there?

A. I do not know what kind of rates they pay. I presume though that the Terminal Company would make a charge. They would not handle it without some revenue, but whether that terminal charge is included in the rate of the Texas and Pacific, for instance, I don't know.

X Q. 53. Now, General Miller has interrogated you as to the complexion and make-up of the various interests at the hearing before the Railroad Commission of Louisiana, on this reduction in rate. I understood you to say that when you went there, representing the New Orleans end of the oil mills, that you found the interior mills and the farmers and the merchants all there fighting your application?

A. I found representatives; yes, sir——

238 X Q. 54. Fighting your application?

A. —of those industries.

X Q. 55. In other words, they were standing in, apparently, with the railroad company to maintain the present existing rate?

A. Whether they were standing in with the railroad company or the interior mills, I am not prepared to say, but they were——

X Q. 56. Resisting the change?

A. Resisting the change.

X Q. 57. And they did so on the theory that their interest would be affected by the change?

A. Yes.

X Q. 58. It was a matter of self-interest on their part that induced them to be there?

A. Their contention was that if New Orleans was allowed to come into that territory of these interior mills, they would raise the price and the interior mills could not compete.



X Q. 59. Did they make that argument before the commission?

A. Well, they may not have done it in so many words, but that was the impression it made on me.

X Q. 60. Did they not also make the argument they were at a disadvantage as compared with the New Orleans mills, from the fact they had a seed rate in to their mills and also a product rate from their mills to New Orleans on the stuff exported?

A. Yes, sir.

X Q. 61. And that the New Orleans mills did not have to pay this product rate because they could ship direct from New Orleans without paying any rail rate at all?

A. That was their contention, but then there is a great deal of their product that was not exported. Even the New Orleans product, there is a whole lot of it that is not exported.

X Q. 62. Is there a cotton factory in New Orleans where they manufacture domestics, bagging, burlaps?

A. Yes, sir.

X Q. 63. That factory is located you might say within 100 miles of a cotton producing territory, is it not, in almost every direction?

A. Yes, sir.

X Q. 64. Now, if you were representing a cotton factory in New Orleans and a cotton factory in the same line of business, manufacturing the same character of goods, but located at Lynn, Mass., should ask for a rate by which it practically got its raw  
239 material upon the same terms that the New Orleans man got his raw material, you would not feel very friendly towards any such rate, would you?

A. No, but then—you mean that the Lynn man would have a lower rate per ton a mile?

X Q. 65. No. He would be on a parity, practically, as to the raw product, within a certain defined territory, he wants to be put on a parity with the New Orleans mill as to the raw product so he can go right down in the same territory and buy and ship it to Lynn practically on the same basis that a man can go to that territory and ship it to New Orleans?

A. I would not consider it was fair unless he paid the same rate per ton per mile. Then I do not think I would have any contention.

X Q. 66. Are you willing to pay the same rate per ton per mile that the local mills pay to get their seed?

A. I do not know how that would figure out. A dollar per ton is about the average rate the country mills pay, over the T. & P.

X Q. 67. You take your haul of 160 miles and the local mill haul of 40 miles, would you be willing to pay the same rate per ton a mile that the local mill pays to get their seed?

A. I do not know, I would have to look into that and see what territory that would cover.

X Q. 68. This is the point I want to call your attention to and ask you to express your opinion about. Do you believe that a factory located in the immediate territory of where the raw product is

produced, should be placed at a disadvantage as against a factory located a distance say of 200 miles from the producing territory?

A. No, I do not think they ought to be placed at a disadvantage. The interior mill has a number of advantages. They [the] only disadvantage they are at is the disadvantage of paying the product rate. Against that they have an immense amount of wagon seed, I do not know what that amounts to, that they do not pay any rate on at all. The cost of operation is less, labor is cheaper. They have those advantages.

X Q. 69. Is it not a fact that those very advantages are what caused those local mills to build in the producing territory?

A. I suppose that is one of their reasons. But most of those local mills were built with the idea they would interest the people that raised the cotton, in their immediate neighborhood, and they would always have it, it did not make any difference what the conditions were they would always control the seed of their stockholders and they could make money in that way. They had their supply of seed assured them.

X Q. 70. In other words it was an advantage to be in the producing territory?

A. It was an advantage in that way. They were all, I think, organized on the same basis, they interested people that could give them the seed.

X Q. 71. As I understand, about the average load of cotton seed, carload, is  $12\frac{1}{2}$  tons, or 25,000 pounds?

A. No. You understand, that is the arrangement we have with the L. & N. railroad for switching. We pay them for switching, \$1.50 a car with a maximum weight of  $12\frac{1}{2}$  tons. But the average car of cotton seed moved by all the roads now, I suppose would be about 10 tons.

X Q. 72. 38,000 pounds?

A. Something like that.

X Q. 73. How near to the capacity of a car can you load it with oil?

A. You mean a boxcar?

X Q. 74. No, a regular oil car?

A. Tank car?

X Q. 75. Yes?

A. I do not know. You see our mills sells all their oil to the local people, and we simply fill the tank and we always try to fill the tank so that it shows up to agree with the tank gauge book, because it is moved over the road—

X Q. 76. Practically the capacity of the tank car?

A. Yes, sir.

X Q. 77. And you can load practically to the capacity of a box-car with your cake and meal?

A. Yes, sir.

X Q. 78. About 60,000 pounds?

A. Yes, sir.

X Q. 79. The years in which you formerly did business on the

Texas and Pacific Railroad, were the years previous to the construction of the interior mills?

A. Well, we have always done business on the T. & P. to a greater or less extent. When we first started in of course there were a few mills at Shreveport and Alexandria, but all the others mills have been built since within the last comparative few years.

X Q. 80. It is since they were built that you lost the bulk of your seed practically from that territory?

241 A. Well, we lost our business on the T. & P., well this is the third year.

X Q. 81. Do you know whether there has been any radical change in rates on the Texas and Pacific in the last three years?

A. No. My recollection is that the tariff on the T. & P. has been practically the same — of years. There may have been some changes at some spots.

X Q. 82. You are located on the L. & N. road?

A. Yes, sir.

X Q. 83. And yet do you not get any seed from that line to amount to anything?

A. No, sir.

X Q. 84. Why did you locate your mill on a line of railroad from which you could not draw your seed?

A. Well, the Standard Guano and Chemical Manufacturing Company has been there for 30 years, long before they had any idea of building an oil mill, and their first intention was, when building the mill, to crush seed enough to make up their fertilizing formula.

X Q. 85. So primarily [primarily] it was your fertilizer you were looking after more than your oil mill?

A. Yes, sir; that is the way the business was first started.

X Q. 86. Will the effect of putting in the commission's proposed rates which are enjoined, increase the movement of the seed from the interior to New Orleans?

A. We certainly will try and get our share of it.

X Q. 87. That is the purpose of it?

A. Yes, sir.

X Q. 88. And to what extent then that you move the seed away from the interior mills do you benefit them or harm them?

A. Well, their crush would be reduced possibly. But if we go into their territory and raise the prices it is possible it might bring out more seed than goes to the mills now, it all depends on the price of seed how much seed goes to the mills. If a man can get 50 cents or a \$1 a ton more he will go to the trouble of hauling his seed either to the mill or transporting it——

X Q. 89. Where does the seed go if it does not go to the mill?

A. Thousands of tons are thrown away, it never goes to the market.

X Q. 90. If that be true then, if thousands of tons are thrown away now——

242 A. Particularly in the last two and three years, when the seed has been so bad it would not pay to handle it.

X Q. 91. If that be true; if the interior mills along the line of the Texas and Pacific were to be stopped, if you broke down those mills and put them out of business, there would be more of that seed wasted?

A. It is not wanted, because these people put it on their land. They use it as a fertilizer. I said throw away, I meant it disappears.

X Q. 92. But, if you absolutely take away the interior mills, there would be less seed shipped to the N. O. mills, according to your theory?

A. Well, there is less shipped to New Orleans than seed shipped to the interior mills.

X Q. 93. Would there not be more waste seed than when the country mills existed, if they were closed down?

A. There are too many things entering into a question of that sort, I could not answer that.

X Q. 94. You testified a few moments ago that one of the effects of the country mills, was they encouraged the planting of cotton and the raising of seed because they were locally interested in those matters?

A. I testified that these men when they went to establish a mill in a town they figured on the people in the neighborhood taking an interest in the mill and becoming stockholders and in that way they would get their seed, not that they would increase the raising of cotton in that particular locality so much.

X Q. 95. Would a local community be benefited by the establishment of an oil mill in its midst?

A. Well, it would employ some labor and naturally they would have to live, it would be benefited in that way.

X Q. 96. And having to live they would also have to live in houses as a rule?

A. Yes, sir.

X Q. 97. In living, the railroad company would at least have an opportunity to bring in the food upon which they exist and the clothes which they wear and the lumber that goes into the building of their houses and all those things?

A. Yes, sir.

X Q. 98. How many men does your mill employ in the oil mill part alone?

A. I am not familiar with that cost. I never have any occasion to see the payrolls.

X Q. 99. Well, take a mill of a certain tonnage, what is  
243 the usual number of employees necessary to operate it, say a mill of 125 tons, as your capacity is?

A. All the people employed around the mill.

X Q. 100. Yes, for the 24 hours you run?

A. Well, I suppose about 60 people, counting all the laborers, loading cars, etc.

X Q. 101. Does the rate of freight have anything to do with the price you pay for the seed?

A. Yes, sir. We try to equalize matters as far as we can.

X Q. 102. Do you know of any combination existing now, or that has existed in the last three or four years, on the part of the oil mills to fix the price of seed in the various territories from which they draw their supplies?

A. Not to my knowledge.

X Q. 103. Have you heard any general rumor to that effect?

A. I have heard rumor to that effect.

X Q. 104. At the Progressive Union hearing, the hearing at the Progressive Hall, before the commission in New Orleans on this cotton seed rate and at which you testified you were present, did you hear any testimony to the effect there was a combination to fix the price of cotton seed in the various territories?

Objection—General MILLER:

I object to that question because it is irrelevant and immaterial. I do not know, of course, what the answer will be. I do know the commission sustained the objection when that attempt was made—it either sustained the objection or that line of inquiry was withdrawn by the representative of the railroad when the objection was made. It has nothing on earth to do with this case, whether or not the rate is reasonable in itself, and whether or not the railroad company has a right by raising rates or maintaining higher rates, to prevent the mills in this city from enjoying the benefit of the competition in that territory.

Judge FREEMAN:

Ordinarily I would say that the gentleman was right, but when a set of complainants located at New Orleans deliberately combine for the purpose of having a rate put in for their special benefit, it is certainly relevant for us to show they combined and attempted to fix the price of seed regardless of any rate. The rate cuts no figure if they can get a low rate so as to get in the territory of  
244 the interior mills and then combine to fix the price of seed.  
I think it is very relevant to show there is a combination to fix the price of seed.

General MILLER:

I object to that question, as I said, because it is irrelevant and immaterial, even on that theory, and moreover it is a mere matter of hearing so far as this witness is concerned.

A. Not when I was there, no. I was only there for a short time. I went there and testified and did not stay there any longer than I had to.

X Q. 105. Did you hear of any one having testified to any such fact and if so who was it.

General MILLER:

Same objection.

A. I do not remember now clearly, but I believe that it was



brought up that there was a combination, but I did not pay any attention to it. It was just hearsay.

General MILLER:

Same objection and the additional objection that the witness is called on to testify to hearsay evidence and the matter is entirely hearsay.

The master rules as to both of the foregoing objections that he declines to say whether the testimony is admissible or inadmissible because, under his construction of the duties of a master, he can merely note the objection. This ruling is made subject to review if at any further hearing, counsel for either side should submit authorities which would lead the master to change his view.

X Q. 106. This hearing at the Progressive Union Hall, in May, was brought about by the complaint of the New Orleans mills asking for a reduction in rates to New Orleans. That was the purpose of it, was it not?

A. I do not know who asked for that hearing. I do not remember whether it was the Standard Oil Company alone or whether it was the New Orleans mills jointly.

X Q. 107. But it was on behalf of the New Orleans mills or a New Orleans mill, you know that?

245 A. Yes, sir.

General MILLER:

We will put an admission on the record there, that all the New Orleans mills combined to fight these rates. But in that particular proceeding it was directed against all of the roads west of the river, as I understand, that reached New Orleans at that time, on their own rails or connections, taking in the connections of Texas and Pacific north of Red River as well as the Southern Pacific.

X Q. 108. Now, before this Progressive Union Hall proceeding, you had investigated the question of the rates and the reasonableness of rates and all that data and all those facts were presented to the commission at that hearing?

A. Yes, sir; I think we made up some kind of tariff that was turned over to General Miller on that thing, he came in there and we talked the thing over and we just stated in a general way what we thought we ought to have and turned over to him some tariffs—we had the old tariffs and this new tariff they are working on now, I don't remember the number of it, 95 I believe, and stated our objections to the tariff.

X Q. 109. And the commission after that hearing, dismissed the complaint?

A. Well, now, I don't know what was the procedure in that case.

X Q. 110. After that hearing, then, you know that the commission did not put in effect the rates that you asked for at that time?

A. No, sir; the rates were not changed.

X Q. 111. And the subsequent hearing was held at Baton Rouge?

A. Yes, sir.

X Q. 112. As against the Texas and Pacific railroad?

A. Yes, sir.

X Q. 113. Which brought forth the present tariff of rates that are enjoined?

A. Yes, sir.

X Q. 114. Now, then, between the Baton Rouge hearing and the hearing in New Orleans, did you make any further investigation as to the reasonableness of rates or did you simply furnish the same testimony at Baton Rouge that you had here?

A. When I went to Baton Rouge I really did not testify at all. Well, I did just make a few remarks, but as far as testifying, I did not testify because at the time I was called on the ground  
246 had been pretty well covered and I just explained to the commission that others that had proceeded me had said about what I would say and I did not think it would be necessary to take up any more of their time.

#### Redirect examination.

By General MILLER:

R. D. Q. 1. You were asked a while ago whether or not you demanded or asked for a reduction in this rate on the T. & P. because lower rates prevailed on the Mississippi Valley, the North Eastern and perhaps some other road. I would like to ask you whether or not you considered this rate, independent of that consideration, was unjust?

A. Yes, sir; I did not think that the T. & P.'s tariff they are working under, now, was fair.

R. D. Q. 2. I would like to ask you whether you took into consideration the fact that you had a previous rate as low as \$1.50 a ton from the Port Allen Branch?

A. That was the thing, principally, that brought this whole thing up, was the advance in the rate from Port Allen to New Orleans, and the great advantage that Cinclair and the Bunkie and other mills had which were located on the line of the T. & P.

R. D. Q. 3. Had there been any substantial New Orleans movement prior to that time when you had the \$1.50 rate?

A. We would get quantities of seed from that territory, yes, sir.

R. D. Q. 4. Did you consider that that rate was a reasonable rate to the railroad or else it would not have put it in?

A. The rate had been in for some little while.

R. D. Q. 5. How long had that \$1.50 rate been in?

A. From the time the road was opened up.

R. D. Q. 6. How many years was that?

A. I do not remember how many years that Port Allen Branch was in operation there.

R. D. Q. 7. How did that rate compare with the main line rate

where the Port Allen Branch reached it in that same neighborhood, was it any higher on the main line than on the Port Allen Branch?

A. It was a little higher on the main line than on the Port Allen Branch.

R. D. Q. 8. I want to ask you whether or not you could conceive of its having cost any more to build or operate a railroad in Louisiana territory, such as is traversed by the T. & P. than the Mississippi Valley?

A. I do not see why it would cost any more, but I am not familiar with railroad building, but taking the topography of the country, I would not imagine it would cost any more; I would imagine it would be about the same.

R. D. Q. 9. Did you take into consideration the average rate per ton per mile, and the average rate received for each ton of freight hauled by the T. & P. railroad, as one of the elements to be considered in this rate question?

A. What do you mean, on all, on everything they move?

R. D. Q. 10. Yes?

A. No, I did not.

R. D. Q. 11. Are you aware of any reason why the rate per ton per mile on cotton seed, should exceed the average rate per ton per mile charged on all freight hauled by that road, greatly exceed it?

A. No, I do not think it ought to; I think that cotton seed ought to take one of the lowest commodity rates that is published in the tariff, except, of course, coal.

R. D. Q. 12. The average rate per ton per mile on all freight by the T. & P. for 1904 was 1.16 cents per ton per mile; in 1905 1.23 cents and in 1906 1.01 cents per ton per mile. If those figures are correct the rate per ton per mile on cotton seed from average distances, say 140 miles, as you state, to New Orleans, would exceed or equal that, would it not?

A. Yes, sir; it would be higher.

R. D. Q. 13. The average amount received for each ton of freight hauled by the Texas and Pacific railroad is put at, for 1904, \$1.75 and a fraction cents per ton; for 1905, \$1.76 and a fraction cents; for 1906, \$1.44 and a fraction cents. That is for each ton hauled. Have you figured out what the rate on cotton seed would be under the commission's—

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tariff from the average distance stated by you, 140 miles?

A. No, I have not.

R. D. Q. 14. At a glance can you not see it would far exceed that?

A. Yes, sir; it would be beyond that, but just what it would be I do not know.

By Judge GUION:

R. D. Q. 15. On your cross-examination you gave some evidence a moment ago about the building up of cotton seed oil mills along the line of the Texas and Pacific during the last few years during the time that the rate that the Railroad Commission now claims the right to change, has been in. Have there been any oil mills of the same kind built in this State on other lines of railroad operating in Louisiana?

A. There have been a number of mills built, not within the last four or five years, about five years ago there were built oil mills everywhere on all the railroads.

R. D. Q. 156 [16]. On all of them, in this State?

A. Yes, sir.

By the MASTER:

Q. On both the east and west side?

A. Yes, sir.

By Judge GUION:

R. D. Q. 17. Are those mills operating, those local mills, on these other lines?

A. As far as I know they are operating.

R. D. Q. 18. I understood you to say a moment ago that if the rate proposed by the railroad commission is put in, your mill 249 and other mills in New Orleans could go into the territory from which you considered you were now excluded, did you say that?

A. Yes, sir.

R. D. Q. 19. What would be the effect, in your opinion, upon the local mills should some of the seed received by them and which you do not get, be diverted to New Orleans? Would that put them out of business in your opinion?

A. They might have to go a little further for their seed, that is all.

R. D. Q. 20. Did you not state a moment ago there would be more seed taken to the mills, than is now carried?

A. I think that New Orleans going into the market it would naturally—they would raise the price and it would induce people to probably haul seed from a distance they do not do now unless there is money enough in it for them.

R. D. Q. 21. Hauled by what?

A. A good deal of seed has to be hauled by wagons, you know, and a man has to haul his seed 15 or 20 miles and if he can get a \$1 more he might haul it.

R. D. Q. 22. What effect, then, in your opinion, of the putting in of the rate as proposed by the commission, have on the price of cotton seed to the producer?

A. I think it would increase competition and the natural tendency would be to raise the price.

R. D. Q. 23. What do you do with the oil that you make in your mill?

A. It is all sold locally to refineries.

R. D. Q. 24. Here in New Orleans?

A. Yes, sir.

R. D. Q. 25. Do they refine it?

A. They refine it.

R. D. Q. 26. And after refining it is it all exported?

A. Oh, no.

R. D. Q. 27. Does it go out again from New Orleans over the railroad coming into New Orleans?

A. Yes, sir; a good deal of that oil is used in the United States; of course a large quantity of oil is exported too.

R. D. Q. 28. Is not some of it converted into lard?

A. The Union Oil Company and the Southern Cotton Oil Company use large quantities of this oil in making their lard?

R. D. Q. 29. Here in New Orleans?

A. Yes, sir; that is offered in the market.

R. D. Q. 30. Is that lard shipped out locally or exported?

A. They do an export business, but then I imagine, without knowledge specially about their business in detail, there is a good deal of it consumed in these near-by states all through this southern country, I do not know how far they go. I know some of it is exported but the large bulk of their product I imagine would be sold in the United States.

R. Q. D. 31. Now, these local mills, when the product is shipped into New Orleans for export, do they get any free time here at the port of New Orleans?

A. There has been so much in the papers and so much talk about—

Judge FREEMAN:

That is a question of published tariff whether they pay free time or not. The commission has a tariff on local shipments and the



railroads have a tariff on export shipments and they are the best evidence of the fact.

By General MILLER:

R. D. Q. 32. Do you know whether or not there is any loss in weight of the cotton seed that you buy and on which you pay freight arising from trash and dirt?

A. When it gets to the mill, the working loss?

R. D. Q. 33. Yes?

A. Yes, sir; there is a loss.

R. D. Q. 34. Have you ever figured—

A. Yes, sir; I have figured—

R. D. Q. 35. —or worked out the percentage of that?

A. Yes, sir. It depends a good deal on the seasons, some seasons the seed is clean and you will get out with 5% or 6% loss and then in bad years it will run away up to 10% and 11%. But there is a loss.

R. D. Q. 37. Does that give the interior mill an advantage in that respect?

A. There is always a loss in working seed.

R. D. Q. 38. So far as their wagon seed is concerned, of course they pay no freight on that extra weight?

A. No, sir.

By the MASTER:

Q. Just one or two questions. How were your river receipts for the past two or three years? Have they fallen off and increased or kept up?

A. For the last two or three years they have fallen off. This last year was hardly a criterion for any figures, the crop was short and very little seed came to New Orleans.

251 Q. You say that if the commission's rates would prevail you could go into their territory and compete with the local mills and pay higher prices?

A. I think we would be forced to pay higher prices if we went into a territory where there is a mill and made a price he would be pretty apt to resent it and raise it. Competition would naturally raise the price.

Q. Then with the present rates prevailing you could buy at the present price as well as the local mill?

A. We would not expect to have to pay the difference between the present rates and the proposed rates to get the seed. We do not think it would raise the price of seed that much.

Recross-examination.

By Judge FREEMAN:

R. X Q. 1. Have you made any comparison between the commission's proposed rates and the rates in effect on the east side lines?

A. I think I did make a memorandum of that some time ago. I possibly might have that in the office, but whether I have or not I am not sure.

By General MILLER:

A. [Q.] Just one moment. I show you a statement here signed by Mr. Charles W. Drown which purports to show the seed received at New Orleans for the seasons from 1899-1901 to 1905-1906, expressed in tons. Please state whether you know anything about these figures. It shows 78,254 tons from July 1st, 1899, to June 30th, 1900, and in the latter year, 1905-1906, to July 1st, 1906, only 20,940 tons. Do you know anything about the correctness of those figures?

A. Yes, sir; I made Captain Drown a memorandum like that.

Q. Where did you prepare those figures from?

A. I got those figures from receipts by boats, railroads, from all the information we had in the office there.

Q. Does that show only river or all seed?

A. All seed. But if you will look at that statement you will see it is not an absolute exact statement of the receipts in New Orleans, because there are omissions of dates—

Judge FREEMAN: If you will let me see that one minute.

252 General MILLER: It is simply a private letter. That is the reason I did not want to put it in evidence.

A. It practically shows the receipts in New Orleans, but it is not absolutely right because there are some dates omitted.

Q. All the mills did not operate here last year?

A. Yes, sir; they all ran some.

Q. How did they all run on 20,000 tons?

A. They all ran a little.

By Judge FREEMAN:

Q. Your tonnage was short because your seed crop was short?

A. Yes, sir.

NEW ORLEANS, May 2nd, 1907.

GEORGE C. HAUSER, witness sworn and examined on behalf of defendants, testified as follows:

Direct examination.

By Judge GUION:

Q. 1. What is your name?

A. George C. Hauser.

Q. 2. Where do you live?

A. New Orleans.

Q. 3. What is your age?

A. Thirty-nine.

Q. 4. What is your business?

A. Assistant manager of the Southern Cotton Oil Company.

Q. 5. Located where?

A. In Gretna, Louisiana, the mill.

Q. 6. Does your mill buy cotton seed?

A. Yes, sir.

Q. 7. Crush cotton seed?

A. Yes, sir.

Q. 8. From what territory do you buy your seed?

A. In the territory where the rates of freight are low enough to allow us to enter the field, for instance, like the Mississippi River and tributaries, Y. M. & V. railroad, Illinois Central Railroad and some points on the T. & P.

Q. 9. Is there any part of the Texas and Pacific territory, 253 or rather the territory tributary to the Texas and Pacific Railroad, where you did buy seed but from which you do not buy now?

A. Yes, sir.

Q. 10. What is that?

A. That is, for instance, the New Roads Branch. We did buy very heavily in that territory some years ago, but for the last two years why we virtually abandoned it.

Q. 11. Why have you abandoned it?

A. On account of the high rate of freight, the increased rate of freight.

Q. 12. Up to what time were your purchases made there principally?

A. Up to the season ending May, 1904.

Q. 13. Was that the time when the increased price for freight charges was put in by the T. & P.?

A. Yes, sir.

Q. 14. What was the rate on cotton seed in that territory prior to the time that the railroad company made the change of tariff under which it is now operating?

A. \$1.50 a ton.

Q. 15. And that is the rate that was in existence up to the time this change was made in April, 1904?

A. Yes, sir.

Q. 16. Examine that and see if you can state from that memorandum whether you can state what the number of tons of cotton seed there were that you got on that New Roads branch and the period when you got it?

A. We call it the New Roads branch, it is the Port Allen Branch. For the season from May 31st, 1902, up to May 31st, 1903—this is approximately—there were 1700 tons of cotton seed that we marketed out of that branch road where the \$1.50 rate applied?

Q. 17. Now, during that season what was the quantity of seed that you received over the Texas and Pacific Railroad from other parts of its line?

A. Approximately 1400 tons, from points along the main line of the Texas and Pacific. That took in rates higher than \$1.50. For instance, Musson, Maringouin, and other points and some of them, I believe Plaquemine, took the \$1.25 rate, we might class Plaquemine as on the main line instead of on the Branch Road. This 1700 tons on the Branch Road of the Texas and Pacific came from Port Allen up the line north, from Baton Rouge Junction north.

Q. 18. And the 1400 tons you say, approximately, you received from other points?

254 A. That are on the main line of the T. & P.; that includes also the Avoyelles Branch, like Cottonport, Simsport, Mansura, and other points up there; I included them in as the T. & P.

Q. 19. What was that rate?

A. From some points on the Avoyelles Branch it is \$2.50, other points \$3. Mansura takes \$3, Marksville takes \$2.50, Redfield and Long Bridge they take \$2.50.

Q. 20. During the season from May 31st, 1903, to May 31st, 1904, what is the number of tons of cotton seed that you received over what you call the New Roads Branch?

A. Approximately 800 tons.

Q. 21. And from other points on the line of the Texas and Pacific?

A. 200 tons.

Q. 22. Now, the season of 1904 to 1905, how many tons of cotton seed did you receive over that New Roads Branch?

A. 128 tons.

Q. 23. And over other parts of the Texas and Pacific road?

A. 1360.

Q. 24. And for the season of 1905-1906, how many tons did you get over the New Roads Branch?

A. 135.

Q. 25. And over the other parts of the Texas and Pacific line?

A. 223. We virtually abandoned the whole territory.

Q. 26. Why?

A. Well, because the rates were too high.

Q. 27. You have examined the tariff of rates as proposed to be put in by the Railroad Commission?

A. No, sir, I have not. I rely [rely] on our transportation man to give me the information whenever I require it.

Q. 28. You mean Mr. Ermon?

A. Yes, sir.

Q. 29. What would be the effect on your business, if you could get an average reduction of 90 cents a ton on cotton seed into your mill, that is, on an average distance of 140 miles?

A. I would put my agent right back in that territory and try to get some seed.

Q. 30. Would your company buy from that territory again on a rate that would make a difference of 90 cents a ton?

A. Yes, sir.

Q. 31. You get cotton seed into your mill over other lines running in this State?

255 A. Yes, sir.

Q. 32. Do you get any on the east bank of the Mississippi River?

A. Yes, sir; we get a great deal from points along there, like Baker, Zacharie and Burnside and other points up there.

Q. 33. Did you get any from Clinton?

A. Well, I do not know if we get any from Clinton, because Clinton gets mostly wagon seed. I think we get a couple of cars from Slaughter. I know ee [we] get some that is near Clinton.

Q. 34. Get any from Norwood?



A. Yes, sir, Norwood and——

Q. 35. What is the rate on cotton seed from those points?

A. Well, from what I can remember, I think it is \$2 a ton.

Q. 36. When that seed reaches New Orleans on the east bank, it is transported over to the west bank to your mill, is it not?

A. Yes, sir.

Q. 37. How does it get over there?

A. It is switched over there by either the Texas and Pacific or Southern Pacific.

Q. 38. Does the T. & P. do any of your switching?

A. Yes, sir.

Q. 39. Does it get any amount from you for switching?

A. Yes, sir.

Q. 40. What are their switching charges?

A. I think it is \$5 a car.

Q. 41. On how many tons to the car, what does a car average?

A. Well, the maximum they usually figure on about 15 to 20 tons a car.

Q. 42. Did you make any shipments out over the line of the Texas and Pacific, of the products of your mill or your factory?

A. Yes, sir.

Q. 43. What do you make over there out of the cotton seed?

A. We refine the oil and we manufacture crude oil and refine it and then we convert that refined oil into such a state that it is fit to enter into the manufacture of lard compound, and we manufacture to a very great extent lard compound which we ship out over these different roads, and also cooking oil.

Q. 44. Where do you get your seed from other than what  
256 you say you have received over the Yazoo and Mississippi Valley and the Texas and Pacific, to operate your mill?

A. We get some from the I. C. also, and we have some shippers also up on the M. L. & T., that is on the Southern Pacific, but most of it we get from the Mississippi River.

Q. 45. What is the rate on cotton seed by the M. L. & T. road?

A. I think there is a uniform rate there, \$3. We operate very little on that road.

Q. 46. That is a new line?

A. No, sir; that is an old line; that is the Southern Pacific, we operate very little on that road.

Q. 47. Is their rate lower or higher than the Texas and Pacific?

A. It is a \$3 rate, the same as the New Roads Branch of the T. & P. That is the reason we have not done so much buying on the Southern Pacific either.

Q. 48. For similar distance is the rate on the Texas and Pacific as high as on the M. L. & T. In other words, have they any rate as high as 17 1/2 a hundred pounds on the M. L. & T. on the main line?

A. I do not know. I am not acquainted with the rates up there. We do not operate much on that line?

Q. 49. How are your principal shipments out made, on what line of lard and other products?



A. We ship out mostly on the T. & P., the I. C. and Y. M. & V., also into Texas on the Southern Pacific.

Q. 50. Where do you get your crude oil from or the principal part of your crude oil from, which you refine and make up into lard compound?

A. In addition to what we get from seed that we crush, we also go out and buy crude oil from the interior mills.

Q. 51. In this State?

A. Yes, sir; and also in Mississippi.

Q. 52. Is it or is it not a fact that your mill works up the principal part of the crude oil manufactured from seed crushed in the State of Louisiana?

A. Yes, sir; I should judge that we do.

Q. 53. Do you buy crude oil along the line of the Texas and Pacific in this State at the various local mills where seed is crushed?

A. Yes, sir.

Q. 54. And after you get the seed to your mill and the crude oil to your mill, or factory, rather, you manufacture that crude oil into refined oil and also into lard compound?

257 A. Yes, sir; and also into cooking oil.

Q. 55. Now, have you ever examined your records or your books in order to determine what the amount of your shipments has been for the past two or three years back, of outbound shipments, I mean over the Texas and Pacific Railway?

A. Yes, sir.

Q. 56. Please look at that statement that I hold and see if that is a correct statement of shipments made from your factory at Gretna over the Texas and Pacific Railroad?

(Counsel hands witness statement referred to.)

A. Yes, sir.

Offer—Judge GUION: In connection with the testimony of the witness, solicitor for defendants offers in evidence statement referred to, marked D-15.

Q. 57. Just examine that statement and state what the quantity of the various products is which you have manufactured at your factory that you shipped out over the Texas and Pacific railroad, giving the dates?

A. Here is a statement from June 1st, 1903, to May 31st, 1904, we shipped out 1539 tons of refined and cooking oil; lard, 4623 tons; soap stock, 304 tons; hulls, 35 tons. Now, the season from June 1st, 1904, to May 31st, 1905, we shipped out oil, 1398 tons; lard, 2707 tons; soap stock, 696 tons, and hulls, 15 tons. For the season from June 1st, 1905, to May 31st, 1906, we shipped out 350 tons of oil and 2919 tons of lard.

Q. 58. Will you please tell us what amount or quantity of seed was crushed at your factory during the year beginning May 31st, 1902, to May 31st, 1903, the approximate total?

A. The approximate total is 16,100 tons.

Q. 59. And for the year beginning May 31st, 1903, and ending May 31st, 1904?

A. 13,300 tons, about, and for the season of 1904-05, 20,251 tons and for the season of 1905-06, 12,506 tons.

Q. 60. Have you ever made a calculation as to what quantity of cotton seed brought into your factory is represented by the outhaul of oil, lard, soap stock and hulls, you shipped out?

A. This lard that we ship out contains 80% of cotton seed oil. Now, this season from June 1st, 1903, to May 31st, 1904, shows we shipped out over that T. & P. line 4623 tons of lard. The 258 equivalent in seed of that is, that is, the output of about 27,000 tons of seed.

Q. 61. More than you crushed during that year?

A. Yes, sir, about 14,000 more.

Q. 62. How does that statement of yours with reference to the season from 1903 to 1904 hold, as to the season for 1904-05?

A. It is about 16,000 tons for the season of 1904-05.

Q. 63. You mean that—

A. That is, the oil contained in that lard is equal to the yield from about 16,000 tons of seed.

Q. 64. And you crushed how many tons that year?

A. 20,251 tons.

Q. 65. How does that statement in respect to the year beginning June 1st, 1903, and ending May 31st, 1904, hold for the year beginning June 1st, 1905, and ending May 31st, 1906, over the T. & P.?

A. It equals about 17,000 tons.

Q. 66. And you crushed that season 12,506 tons?

A. Yes, sir.

Q. 67. Then, do I understand you to mean that your shipments of lard over the Texas and Pacific for these several years concerning which you have been testifying is more than the total tonnage of seed that has been brought in from all sources?

A. Yes, sir.

Q. 68. Is there another mill at Gretna that is engaged in the same business that you are?

A. Yes, sir.

Q. 69. Receiving cotton seed, crushing it and refining the oil and shipping out oil and lard compound?

A. Yes, sir. Well, there is the Union Oil Company, they are crushers and refiners, and the Fairbanks people are also at Gretna, they have a factory, they ship out lard.

Q. 70. Is that part of the Union Oil Company's mill, in connection with it?

A. I think they are connected with it.

Q. 71. Do they do as large a business as you do?

A. Yes, sir; I should judge, probably in some territories larger.

Q. 72. Do you ever ship out from your factory any of these products you have just testified about, over other roads than the Texas and Pacific?

A. Yes, sir.

259 Q. 73. Over any of the roads on the east bank of the Mississippi River?

A. Yes, sir; we ship to all points in the United States.

Q. 74. How are those shipments made to these other roads on the east bank from your factory?

A. They have to switch them over to the line on this side by either the Texas and Pacific or the Southern Pacific, load a car and switch it over here.

Q. 75. Any charge for switching?

A. Yes, sir; it is \$5 a car on the Texas and Pacific.

By General MILLER:

Q. 76. Examine this table of rates which is proposed to be put in by the Louisiana Railroad Commission, on the Texas and Pacific Railroad, being distance rates, and look at the points where you think your mill would enter the market and state whether or not, if that rate or those rates were in force, your company would become a free buyer in the territory indicated?

A. Yes, sir; we would.

General MILLER: The table referred to is set out in a printed copy of the bill filed in this case, on page 18.

Q. 77. Did you ever learn from any of the traffic representatives of the Texas and Pacific railroad the reason why that \$1.50 rate was cut out of the Port Allen Branch?

A. No, sir; I never inquired into it because I do not bother very much with the rates. Mr. Ermon called my attention to the fact that the rate on the New Roads Branch had been changed to \$3 and I right away took it up with our seed agent up there who lives at New Roads mill, at least near it, and I told him we could not do any more business in that territory.

Q. 78. You withdrew him from that territory?

A. Yes, sir; I withdrew him and put him on the river.

Q. 79. Do you know when the mill was established at New Roads?

A. No, sir; I do not know the exact year, but I know they have been there several years. They were there when that \$1.50 rate was in force.

Q. 80. Do you know anything of the policy of the Texas and Pacific to maintain a high rate to New Orleans in order to compel the manufacture of seed by the interior mills so they would get the outbound haul of the products?

A. No, sir; I never inquired into that.

280 Cross-examination.

By Judge FREEMAN:

X Q. 1. What does it cost to manufacture the seed into its product at your mill, per ton?

A. That depends upon the manner in which we can run our mill.

X Q. 2. Let us take the season, last season, from June of last year to May of this year?

A. It may be from \$3 to \$3.50 a ton.

X Q. 3. How many tons of seed did you buy during the season ending May 31st, 1906?

A. We crushed altogether 12,506 tons.

X Q. 4. How much have you got invested in your plant.

A. I guess there is a couple of hundred thousand dollars. We are assessed at \$250,000, that is, the plant alone.

X Q. 5. How much oil did you receive from Louisiana points on the Texas and Pacific, and from other points on the Texas and Pacific outside of Louisiana, crude oil, for the years you have set forth in that statement, per year?

A. I do not know what the quantity would be, but we buy from all those mills up there all over the State on every road.

X Q. 6. I am talking about the Texas and Pacific. Have you got the tonnage you received from the Texas and Pacific from points in Louisiana?

A. Of crude oil?

X Q. 7. Yes?

A. Into our mill?

X Q. 8. Yes?

A. No, sir. I know we have bought a lot of oil from New Roads and Cinclair.

X Q. 9. Can you furnish me a statement showing the amount of tons of crude oil you bought from Louisiana points on the Texas and Pacific covering the years that statement covers?

A. Yes, sir.

X Q. 10. And also the amount of crude oil you bought from other points other than Louisiana points, but coming in over the Texas and Pacific during those years, that is, Texas and Arkansas?

A. Yes, sir.

X Q. 11. You buy crude oil from all points, state and interstate?

A. Yes, sir.

261 X Q. 12. Your principal business is the manufacture of crude-oil into products?

A. Yes, sir.

X Q. 13. How far out during the last three seasons have you been able to buy seed and bring it in over the roads located on the east side of the river?

A. I know we bought a good deal of seed up here around Baker, for instance, and Zacharie, and Slaughter, we got some from Slaughter and Burnside and other points, all up along the Y. M. & V. road.

X Q. 14. What was the rate from Burnside?

A. I think it was \$2.

X Q. 15. What is the distance from Burnside to New Orleans, do you [know]?

A. I think it is about 62 miles.

By General MILLER:

Q. Is that \$2 the river rate also?

A. Yes, sir.



By Judge FREEMAN:

X Q. 16. How far is Gros Tete from New Orleans?

A. About 101 mil-s, is it not.

X Q. 17. Yes. Do you know what the rate is from Gros Tete to New Orleans?

A. \$2, 10 cents a 100 pounds.

X Q. 18. Do you know of any interior mill located, say at Bunkie or at Boyce or any of the points on the Texas and Pacific railroad, that draws any of its supply of seed from points east of the river.

A. I don't know where they draw their supply from.

X Q. 19. What proportion of your seed are brought in by river transportation for the years you have named there?

A. About three-fourths.

X Q. 20. Do you ship out over the Texas and Pacific in the way of lard compound or other products of crude oil, as much tonnage as you bring in, in crude oil?

A. You mean tonnage of crude oil that we actually derive from the crush seed?

X Q. 21. No, not from your crush; I mean from the crude oil you bring in?

A. From all sources—what is that question?

262 X Q. 22. Do you ship out, in the way of the products of crude oil, as much tonnage as you bring in, in crude oil, over the Texas and Pacific railroad?

A. I should judge we ship out a great deal more.

X Q. 23. Do you ship out over the Texas and Pacific as much tonnage in the products of crude oil, as you get from the seed that you actually crush here?

A. We ship out more than its equivalent from what I can figure, ship it out over the Texas and Pacific.

X Q. 24. In other words, you get more crude oil in than you get from seed that you crush?

A. We get more crude oil because we buy crude oil also.

X Q. 25. You get more crude oil than you get from seed you actually crush?

A. Yes, sir.

X Q. 26. And that crude oil is brought in over various lines?

A. Yes, sir.

X Q. 27. Then the product that you have testified to as having shipped out over the Texas and Pacific, was not from the seed that you crushed, that you brought in and crushed; but was from the crude oil that you had brought in and manufactured here?

A. Of course, I could not distinguish exactly whether it was from the yield from our seed. The only thing is, it exceeded the seed, the oil that we had produced from our entire crush of seed, so I naturally infer that in that lot that went out over the Texas and Pacific in lard compound, why, there was oil we purchased from other sources and also from the T. & P.

X Q. 28. Did you ship out any refined oil over the Texas and Pacific?



A. Cooking oil we ship out. I guess we ship some refined oil too.

X Q. 29. How much, how many tons of refined oil do you ship out over the Texas and Pacific for the years mentioned in your statement?

A. For the season from June 1, 1903, to May 31, 1904, it says, oil 1539 tons. Of course, that principally is refined and cooking oil too; it is all grades of oil. In other words, it is all grades of refined oil. Now the season 1904 to 1905, 1398 tons, and the season 1905 to 1906, 350 tons; that is, of oil.

X Q. 30. How many pounds of cake and meal do you get from a ton of seed?

A. I usually figure on between 850 and 900 pounds.

X Q. 31. And how many gallons of oil?

263 A. About 40.

X Q. 32. And how many pounds of lint?

A. I guess about 35 to 40.

X Q. 33. And how many pounds of hulls?

A. About 600.

X Q. 34. What has the meal and cake been worth per ton during the past season?

A. There has been a very wide fluctuation in meal and cake; we sell some as high as 28 and again as high as 24.

X Q. 35. It will run between 24 and 28?

A. Yes, sir.

X Q. 36. What has been the price of oil?

A. All the way from 25 to 41 cents.

X Q. 37. What has been the price of linters?

A. Well, linters, it depends on the grade, you might average it about 2½ cents a pound.

X Q. 38. And your hulls?

A. Hulls probably 20 to 25 per 100 pounds.

X Q. 39. Now, I understand you to testify that up to a few years ago the Texas and Pacific Railroad had in a rate from its Port Allen branch, we will call it, of \$1.50 a ton?

A. Yes, sir.

X Q. 40. And that was taken out?

A. Yes, sir.

X Q. 41. At the instance, as I understand you to say, of the mill that was constructed up on that branch, called the New Roads Mill?

A. No, sir; I did not say that; I did not know what the cause of it was; I just learned that the rate was raised.

X Q. 42. Was the raising of that rate to the interest, or not to the interest, of the mill that had been constructed on the New Roads branch, the New Roads Mill?

A. I guess it was to his interest, that is, because he could buy seed up there at a cheaper rate than we could, or he could pay for it what we could not.

X Q. 43. How far out on the Texas and Pacific could you go under the commission's proposed rates that were submitted to you a few moments ago and buy seed in competition with mills located in the various territories that you could reach?

A. We used to buy up around Maringouin, Musson and Fordoche, which are points that I can remember.

X Q. 44. The question I ask you now is how far from New Orleans on the line of the Texas and Pacific could you go  
264 under the proposed rates of the commission that were just submitted to you?

A. I would have to look at it—(witness looks at the document referred to). We could go all along this line.

X Q. 45. The full maximum?

A. Yes, sir; because I would figure on an average freight.

X Q. 46. You could go then the entire line under those rates?

A. Yes, sir.

X Q. 47. You notice that that tariff also reduces the rate on manufactured products of the seed, do you not?

A. I see what the figure is; I do not know whether it is a reduction or not. I do not know what the rate was before.

X Q. 48. Well, if there was a reduction the Texas and Pacific would get less out of the crude oil that you bring to New Orleans than it does out of the present rate, would it not?

A. They would get less on the crude oil they would bring in?

X Q. 49. Yes, that you bring here, than they do now; that is, if the rate on the crude oil from the interior mills was reduced, why the Texas and Pacific would get less for hauling from your mill at New Orleans than it does under its own rates; that would follow as a matter of mathematics. I am talking about the rate on crude oil?

A. Mostly oil we get in off this road, for instance, like oil from New Roads and Cinclair, we figure our price from what we do with mills that are not located as favorably as they are; for instance, milling and transit rate, we buy in oil from New Roads; we destine that oil right on through to Chicago, and the rate from New Orleans to Chicago, as I understand it, is about 25 cents per 100 pounds, and from New Roads to Chicago it is only 32 cents, so we give the interior mill the benefit of that difference.

X Q. 50. You misunderstand my question; I am not asking as to the price to the interior mill. I am asking if the freight on crude oil from the interior mill to New Orleans is reduced, that comes out of the railway company?

A. If they reduce their through rate to Chicago, where we ship this oil.

X Q. 41. [51.] I am not talking about the interstate rate?

A. We do not buy any oil based on the rate to New Orleans, we buy it on a rate clear on to Chicago.

X Q. 52. Who gives you that rate?

A. The transportation department.

X Q. 53. What railroad?

265 A. I do not know what the road is, but the rate applies from certain points.

X Q. 54. As a matter of fact, does not the proposed reduction of the Railroad Commission of Louisiana's rate on crude oil from the interior mills to your mill, come out of the Texas and Pacific Railroad Company's pocket?

A. Yes, sir; if the rate into New Orleans is reduced.

X Q. 55. Now, when you bring oil in from these interior mills on this milling and transit rate, consigned to Chicago, does that go out over the Texas and Pacific, or go over on the lines on the east side?

A. It goes over the east side lines.

X Q. 56. What has been the average price paid by your mill for seed during this last season, ending May 31st of this year?

A. You mean this year, or this current year?

X Q. 57. This current year.

A. You mean at the mill points or delivered here?

X Q. 58. Well, delivered here?

A. In the neighborhood of \$15 and \$16.

X Q. 59. Are seed higher this year than last?

A. I really do not know; it seems to me they are a little higher. I think at one time last year seed were very low; then they went up later, when it was determined that the crop was short.

Redirect examination.

By General MILLER:

R. D. Q. 1. What portion of the crude oil that you get from the interior mills is converted into product by your mill?

A. I should judge it is all converted into product. For instance, this oil, if it is not converted into lard, is converted into edible oil.

R. D. Q. 2. What proportion is sent forward as refined oil or cooking oil, and what proportion is made into lard and soap stock, as a rule?

A. I guess we might export perhaps 20% of our total purchases and convert into compound probably 60% and the other into cooking oil.

R. D. Q. 3. That would indicate about 20% of cooking oil, would go through on this through rate?

A. Yes, sir.

R. D. Q. 4. I shall ask you this: do you know whether  
266 or not any cotton seed that you receive in bulk by these railways has any substantial proportion in weight, I mean bolls, trash, etc., that is thrown away in manufacture?

A. Yes, sir.

R. D. Q. 5. Have you made any estimate of that proportion, and what is it?

A. Yes, sir; I should judge it is all the way from 8% to 20%; I have seen some already as high as 16% of bolls and trash.

R. D. Q. 6. And you pay the freight on that just as you would on the seed?

A. Yes, sir.

R. D. Q. 7. And that is a total loss?

A. Yes, sir.

R. D. Q. 8. The interior mills, who get seed by wagons, don't experience that burden?

A. If they do they can deduct it.

R. D. Q. 9. If they do not pay any freight, it does not make any difference, does it?

A. They can deduct it when the wagon goes on the scales, and deduct the value of what they think is trash; we cannot determine it until we unload the car.

R. D. Q. 10. Is it the rule of your mill to give dispatch in unloading and loading cars?

A. Yes, sir; if possible, we load them again and ship them right out with finished product.

R. D. Q. 11. And when you have no finished product to send over the same line, is it not your rule to unload the cars promptly?

A. We have got to unload them in 24 hours; otherwise demurrage will accrue.

R. D. Q. 12. Do you always manage to avoid demurrage?

A. Yes, sir; our demurrage bill is very small.

R. D. Q. 13. In your experience in this business, have you lost much seeds, and made many claims against the railways for damages?

A. No, sir; we have not lost much.

R. D. Q. 14. Has not that been trifling and insignificant?

A. Yes, sir; probably one car a year; this last year we have had more trouble than any.

R. D. Q. 15. Have you ever known of wrecks to occur on railroads where cars loaded with seed have been capsized and broken up, and whether or not the seed were recovered?

A. No sir; we never had any experience of that kind.

267 R. D. Q. 16. Do you know whether it is difficult to set fire to seed in bulk?

A. I do not know of any instance where we have had any fire in our seed piles; they get a little hot sometimes, heated; I never saw a blaze.

R. D. Q. 17. Have you got your own tank cars?

A. Yes, sir; we have got over 200 in our equipment.

R. D. Q. 18. You generally get oil from the interior in tank cars you furnish?

A. Yes, sir.

R. D. Q. 19. Do you run them as far as Texas?

A. Yes, sir.

By Judge GUION:

R. D. Q. 20. What proportion, in your opinion, of your product from seed that you crush, and from crude oil that you refine, is exported from the port of New Orleans?

A. Well, we export very little lard. For instance, last year I think we manufactured 28 million pounds and we might have exported 4 million.

R. D. Q. 21. Is that about the proportion that would hold good for the previous year?

A. Yes, sir.

R. D. Q. 22. And the balance goes where?

A. In the United States.

R. D. Q. 23. And what proportion of that balance goes over the Texas and Pacific line as compared with the other lines; does it get the bulk of it?



A. I guess they get about their share.

R. D. Q. 24. What would be the proportion as compared with other lines of railway over which you would ship the lard compound?

A. I do not know now exactly what; I would have to figure this out and see exactly what each line got; I only know the total they got.

R. D. Q. 25. You can tell it by knowing the points shipped. Where do the largest proportion of your shipments go to, of lard compound?

A. I do not know, I would prefer that you ask Mr. Ermon, because he attends to all that transportation business.

R. D. Q. 26. Do you know anything about fertilizers, cotton-seed meal for instance, manufactured at your factory?

A. We have not manufactured cotton-seed meal for the last three or four years; we manufacture only cake.

268 R. D. Q. 27. Where does that cake go to? Is that exported?

A. We sell it to the exporters here; I guess it is exported, mostly.

A. We have not sold any to them lately.

R. D. Q. 29. Is there any refinery of crude oil at any of these local mills in the State of Louisiana?

A. There is one in Gretna, but I do not know of any in the interior; there may be one or two. I think Shreveport has one, and Monroe.

By General MILLER:

R. D. Q. 30. You don't know the average length of haul the Texas and Pacific gets of your products that you ship over that line, do you?

A. No, sir.

R. D. Q. 31. Do you know where the bulk of it is destined?

A. No, sir; I think Mr. Ermon will be able to answer that.

By Judge GUYON:

R. D. Q. 32. If the rate on crude oil brought in from these local mills to New Orleans or to your factory is reduced, what effect would that reduction have on the owner of that crude oil on the local mill?

A. I do not think it would have any effect except in making him get a better price for his crude oil.

R. D. Q. 33. Is it not a fact that he would get a better price?

A. That is the way I figure my purchases; I figure it on a price F. O. B. New Orleans, then I deduct the freight from the interior point to New Orleans, and give them the net. That is about the way I figure my purchases.

R. D. Q. 34. If the local mill gets more for its crude oil, would that have any effect on the price of cotton-seed to the producer?

A. That would be entirely up to them; if there was no competition in there they could put the price of cotton-seed to whatever they wanted to.

R. D. Q. 35. What I mean is, if the local mills and the New Orleans and Gretna mills are put on a parity by reason of the



269 putting in of the Railroad Commission's tariff, would the producer of cotton-seed get any benefit of this increase in price of crude oil to the local mill?

A. I would judge that he would get a better price for his seed.

Recross-examination.

By Judge FREEMAN:

R. X Q. 1. How much mileage do you get from the Texas and Pacific for the use of your tank cars?

A. I do not know; that does not come through my department.

R. X Q. 2. If you could go down in the interior mill territory and buy seed, it would not have the same amount of crude oil to serve you, would it?

A. If they marked the same proportion of seed they would.

R. X Q. 3. If you are principally dealing in crude oils and manufacture of crude oils, and you took into consideration the freight rate in buying the crude oil, you do not care whether the cotton-seed rate is reduced or not, do you?

A. I want the cotton-seed rate reduced so I can go into that territory and buy seed myself; I can't let my mill dry up.

By General MILLER:

Q. What is the capacity of your mill?

A. 200 tons a day.

By Mr. BRAGGINS:

R. X Q. 4. In looking over that tariff of proposed rates by the Railroad Commission, did you notice that as well as reducing the rate to New Orleans it also proposes a reduction in the rate on seed to the interior mills, that is, for the short hauls?

A. No, sir; I did not notice it.

R. X Q. 5. Well, if that is a fact and the rate has been proportionately reduced to the interior mills, that is, in proportion to the same reduction for the long hauls to your mill, why do you think you would be in a better position to go in that territory and buy seed, supposing the relative rates are the same as they are now, relatively?

A. Well, the interior mill would put the price up to such a point that I would have to stop, but I would have my agent in there, nevertheless.

R. X Q. 6. How could he do that more than now, considering the fact that the rates are relatively reduced; that is, proportionately reduced to the interior mill for the short haul, the same as they are to the New Orleans mill for the long haul?

A. The interior mill has a big advantage in their wagon seed.

R. X Q. 7. The reduction in the rate has no effect on the wagon haul or wagon seed they get?

A. They do not pay any freight on that at all.

R. X Q. 8. I know, but you are claiming that a reduction in the rate would enable you to go into that territory and buy seed where

you cannot go now, but considering the fact that the rate is reduced to the interior mills as well as to you, leaving the relative conditions the same as now, how would you be able to go in there and buy seed any more than now, as against the interior mills?

A. I am not basing my figures on the market at present; don't know what the market will be then; it will depend on the market price for seed. If I can figure a profit I am going up there and get it.

R. X Q. 9. Supposing the seed rate is reduced from railroad points they get it into the mill, the product rate is reduced from the mill out as well as your seed rate reduced, it is presumed that the relative value of the seed is the same as now to both mills. That being the case, how are you going to buy seed as against them any more than you can now?

A. We might be able to get the preference at the same price or something like that.

R. X Q. 10. Now, considering these facts, are you willing to say that you can go in there and buy seed better than and as well as you do now?

A. If the freight rate is reduced?

R. X Q. 11. If the proposed commission's rates are made effective, the rates you examined a while ago—

A. I know this much, I would enter that territory, I would try to put my men back there.

R. X Q. 12. There is another question I would like to ask you, you mentioned or General Miller asked, relative to the trash and waste in the seed that you shipped in here by rail; you said it was considerable, I believe, you figured in your figuring the products, about 150 pounds of waste?

A. That is about 8%; I have seen it run higher than that.

R. X Q. 13. When do you pay for that seed, before you get it and unload it or afterwards?

A. Sometimes we pay for it months ahead; the farmer may probably call on us for some money and we would advance  
271 him money and he would claim for the trash and we would have to pay it.

R. X Q. 14. Do not the interior mills do the same thing when they buy seed from the farmer?

A. I do not know what their practice is.

R. X Q. 15. Does not the same amount of trash get into the seed they ship in to the interior mills by rail, the same as it does in yours?

A. I should judge so.

By General MILLER:

A. [Q.] In the case supposed by Mr. Braggins that the mill will be in the near neighborhood of the seed they buy, this rate that you would want to work on contains tables of distances up to, say 150 miles, do you know whether or not those interior mills ever go more than 40 or 50 miles from their places?

A. No, sir; I really do not know. I would not judge so; I never heard of any of them going very far.

Q. When they go distances of 120 miles, would they have any advantage over you?

A. You mean when they go that far?

Q. Yes.

A. I do not think so.

WILLIAM C. ERMON, witness, sworn and examined on behalf of defendants, testified as follows:

Direct examination.

By General MILLER:

Q. 1. What is your name?

A. William C. Ermon.

Q. 2. What is your business?

A. I have charge of the transportation department in this territory for the Southern Cotton Oil Company.

Q. 3. How long have you been in that position?

A. About four and a half years.

Q. 4. Did you ever have any experience in transportation matters before that time?

A. Yes, sir; in the traffic department of Mr. Braggins and in the Southern Pacific as well.

Q. 5. You have been with the railroad traffic department of the Texas and Pacific?

A. Yes, sir; I was Mr. Braggins's stenographer.

Q. 6. Are you familiar with the rates on cotton-seed and products in the territory tributary to New Orleans?

A. Yes, sir.

Q. 7. Do you know how the rates on the Texas and Pacific for similar distances compare with the rates on other railroads that haul cotton-seed to New Orleans?

A. They are much higher, except on the Southern Pacific, that is, from points from which we move seed.

Q. 8. There is no cotton-seed country until you get up on the Teche on that line?

A. I do not think there is but one or two places, that is, south of Plaquemine.

Q. 9. I am asking on the Southern Pacific?

A. On the Southern Pacific; no sir.

Q. 10. Where does the substantial movement of cotton-seed begin, what distance, I mean to New Orleans, on the Texas and Pacific?

A. Well, about Plaquemine; that is, I believe, 85 miles.

Q. 11. And what is the present rate for distances up to 100 miles over the Texas and Pacific?

A. That is a commodity rate.

Q. 12. What is that rate?

A. \$1.25.

Q. 13. Up to what point?

A. Baton Rouge junction.

Q. 14. Near the river?

A. Yes, sir.

Q. 15. And when the road leaves the river and goes back into the interior, what is the rate?

A. You mean on the New Roads branch?

Q. 16. And the main line, too?

A. They have commodity rates on the New Roads branch of 10, 11 and 15 cents per 100 pounds to New Orleans and——

Q. 17. On the New Roads branch?

A. No, sir; they have mileage rates on the New Roads branch.

Q. 18. How much?

A. That is about 15 cents per 100.

Q. 19. That would make it about \$3.00 a ton?

A. Yes, sir.

273 Q. 20. Do you know what led to the change in the rate from Port Allen?

A. Not positively, I always understood it was the establishment of the mill at New Roads.

Q. 21. From what sources did you obtain that understanding?

A. I do not know just now.

Q. 22. Did you ever take this matter up with the traffic people and undertake to get it adjusted or a reduction?

A. Yes, sir; we did. I don't know just what the outcome was, but I know the rate was never reduced. Just what reason they gave for advancing the rate I cannot recall.

Q. 23. How much experience have you had in the traffic department of railroads?

A. I was with Mr. Braggins about two years, and before that I was in the rate department of the Southern Pacific for about eight years.

Q. 24. Well, are you prepared to express an opinion as to the reasonableness of the railroad rate on cotton-seed. You are familiar with the rate, are you?

A. Yes, sir.

Q. 25. —of the Texas and Pacific to New Orleans from points above, say a distance of 100 miles?

A. Yes, sir.

Q. 26. What have you to say as to the reasonableness of that rate?

A. One reason why I think the rate is high is because recently the L. R. & N. have established low rates in the cotton-seed territory, a maximum rate of \$3.00.

Q. 27. Is that a new railroad?

A. Yes, sir.

Q. 28. Just beginning?

A. Yes, sir; in fact, they have established a maximum rate of \$2.00 on their entire line east of the river as far as Angola. I think that is 139 miles.

Q. 29. When you get west of the river on that line?



A. The rate is \$3.00 the whole line; that is my understanding.

Q. 30. You mean from the very beginning?

A. Yes, sir.

Q. 31. They have got eight miles of transfer of ferry up there?

A. Yes, sir.

Q. 32. Is that rate lower or higher for similar distances than the present rate of the Texas and Pacific?

A. You mean the present mileage rate?

Q. 33. Yes.

A. Much lower.

Q. 34. I am talking about the railroad company's rates?

A. Actual rates on the L. R. & N. on the east side of the river are much lower.

Q. 35. Is \$3.00 a ton the highest rate they have to New Orleans?

A. Yes, sir.

Q. 36. Do you know the highest rate the Texas and Pacific has?

A. Is a mileage rate; I think it goes way up to 20 odd cents; we never have any occasion to go up that far, though. The maximum mileage rate is 17½ cents on the Texas and Pacific.

Q. 37. And at what distance does that begin?

A. That begins from 170 miles to 300.

Q. 38. And at what point does a lower rate begin?

A. 160 miles, 17 cents.

Q. 39. When you get to the 170 miles you reach the maximum and that is 17½ cents?

A. Yes, sir.

Q. 40. That is the railroad's own rate?

A. Yes, sir.

Q. 41. Have they got any commodity rates on seed, without reference to mileage at any points?

A. Yes, sir.

Q. 42. At what places are they?

A. They have a rate of 11 cents from Ravenwood, Fordoche, and 10 cents from Musson, Rosedale and Gros Tete to New Orleans.

Q. 43. What about the rates to Cinclair?

A. Commodity rates by the Avoyelles branch is \$2.50 a ton.

Q. 44. Where do they go?

A. To New Orleans.

Q. 45. What about their rate to Cinclair?

A. The rate to Cinclair from these points, they have special rates published to Cinclair.

Q. 46. How much lower is that preferential rate for similar distances than the regular rate on that road?

275 A. I think it is lower.

Q. 47. Substantially lower?

A. Yes, sir; I think so. The rate from New Roads is 10 cents; Chamberlain, 9¼ cents; 8 cents from Lobdell; that is gross rate; the net rate is 7 cents from New Roads and Glynn; 6¼ cents from Chamberlain; 5 cents per 100 pounds from Lobdell and Belmont, and 50 cents a ton from Port Allen.



Q. 48. And what is the average distance to those points?

A. The average distance from Cinclair to those points?

Q. 49. Yes.

A. I guess about 40 miles and 50 miles.

Q. 50. Is there anything, Mr. Ermon, any condition affecting the operation of the railroads that ought to make it more expensive to handle transportation on the Texas and Pacific Railroad than any of these other railroads running to New Orleans?

A. I am not familiar with transportation affairs, but I do not think so.

Q. 51. You are familiar with the line of the road?

A. Yes, sir.

Q. 52. You have been over it a good deal?

A. Yes, sir.

Q. 53. Does it run through a level country?

A. Yes, sir; principally.

Q. 54. Do you know of any heavy grades or curves?

A. Not in Louisiana, to my knowledge.

Q. 55. Cotton-seed are carried in a box car?

A. Yes, sir; we have never had a claim in five years, west of the Mississippi, on the Texas and Pacific; and I can only recall a claim on cotton-seed for pilfering, that occurred last year.

Q. 56. Have you had to do with making rates in the traffic department of a railroad?

A. No, sir.

Q. 57. You do not know of the elements entering into consideration in determining what they should be?

A. No, sir; I never had anything—of course, I have an idea—but never had any practical experience.

Q. 58. You only put down figures that are given to you?

A. Yes, sir.

Q. 59. What is the rate for distances of 120 to 150 miles, say, on the Mississippi Valley road to New Orleans?

A. 10 cents per 100 pounds, I think.

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Q. 60. Look at the tariff and see?

A. From 110 up to 140 miles the rate is 11¼ cents; up to 100 miles the rate is 10 cents; that is a mileage rate.

Q. 61. And how is it about that?

A. Up to 140 miles it is 11¼ cents.

Q. 62. How high does that rate extend?

A. Up to 140 miles.

Q. 63. What is the next?

A. The next rate is 12½ cents up to 150 miles, 13¼ cents is the maximum for over 200 miles—150 and over.

Q. 64. Now, that proportion of the Mississippi Valley road, north of Baton Rouge—say all the country about Slaughter and those stations up as high as Centerville—is the line of the road near enough to the Mississippi River to be effected by water competition, at Slaughter and the other points?

A. I think not, at Slaughter.

By Judge GUION:

Q. 65. Don't that same condition prevail at Wilson, Norwood and Centerville?

A. Yes, sir.

By General MILLER:

Q. 66. It is too far from the river to permit any competition by boats?

A. Yes, sir.

Q. 67. Mr. Ermon, do you know where the bulk of the shipments that the Southern Cotton Oil Company purchase over the Texas and Pacific goes?

A. Yes, sir; the bulk of the finished products in the shipping of lard compound, move to Texas points, Missouri River points, Colorado, Utah and Arkansas; in fact, everywhere west of the Mississippi River and to Memphis and Natchez, and some few other points east of the Mississippi River.

Q. 68. Now, the products that go out over the Texas and Pacific, would they or not go the full length or practically the full length of its line in Louisiana?

A. Everything, except Arkansas and east of the Mississippi River, goes the full length of the Texas and Pacific in Louisiana; some Arkansas goes through Shreveport and the Cotton Belt.

Q. 69. Do you know what the rate is on the Northeastern Railroad to New Orleans?

277 A. I do not remember exactly; I think it is 15 cents, the maximum rate.

Q. 70. Where does that begin?

A. I do not know.

Q. 71. Do you know what the rate is over that line for distances of 140 miles?

A. I have no information on that subject.

Q. 72. Do you know what it is on the Illinois Central?

A. They have commodity rates established from all stations in Louisiana from which cotton-seed are moved until the maximum rate is  $8\frac{1}{4}$  cents in Louisiana.

Q. 73. What is the maximum distance in Louisiana?

A. 89 miles.

Q. 74. When you get above there, in Mississippi—

A. You get on mileage rates.

Q. 75. Do you recall what they are?

A. I have it here.

Q. 76. I wish you would look and see?

A. The rate published here, up to 100 miles is 10 cents a 100.

Q. 77. How far up does that go?

A. That goes up to 100 miles.

Q. 78. And above 100?

A. There is no rate shown above 100.

Q. 79. That is Louisiana before you?

A. Yes, sir.

Q. 80. Have you got an interstate tariff?

A. No, sir.

Q. 81. Have you any independent recollection of what it is?

A. I think as high up as we ever operate, at Hazlehurst, up around there, we have got some seed in the past years at a rate of \$2.60 per ton.

Q. 82. That is about 150 odd miles from New Orleans?

A. Yes, sir; I am not certain about that rate, though.

Q. 83. Do you know of any other traffic corresponding to cotton-seed in respect to volume and the methods of handling, weight, etc., that has a higher rate than that on cotton-seed?

A. You mean on the Texas and Pacific?

Q. 84. Yes.

A. No, sir; not that I recall. There is no handling to speak of, it comes in our mill and unloaded by us; except the transportation of it they have no handling at all.

Q. 85. It is handled expeditiously, is it?

278 A. We pay about \$12.00 a year car service; that shows how expeditiously it is handled.

Q. 86. From your knowledge and experience of the situation, has or not the Texas and Pacific kept regular local freight trains operating up and down its lines without any regard at all to the business offering?

A. I do not know.

Q. 87. Try and refresh your memory, and if you can, state whether or not that railroad has always operated local freight trains?

A. I never heard of a case where they did not operate their daily freight trains.

Q. 88. Are you able, from your connection with the traffic department of that railroad, to state whether or not it is a disadvantage to be required to handle traffic of this sort by local freights?

A. There is no disadvantage that I know of.

Q. 89. How long has that \$1.50 rate been in force over that Port Allen branch; do you remember that?

A. For years—a long time.

Q. 90. Do you know of any reason why there was a lower rate over the Port Allen branch than on the main line for similar distances?

A. You mean why that commodity rate was established?

Q. 91. Yes.

A. I believe, competition with the boats.

Q. 92. How far have they water competition from the line of the Port Allen branch, except at the junction?

A. You mean at Lobdell?

Q. 93. Yes.

A. I do not know; the distance is not very great, though.

Q. 94. Do you know whether the steamboats have advanced their rates in that territory since then?

A. I believe the rates are the same; I do not know exactly myself where the—

Q. 95. At what point does it leave the main line?

A. It leaves the main line at Baton Rouge junction, not very far from the river.

Q. 96. At what average distance is it from the Mississippi River or from Red River?

A. I do not know.

Q. 97. Are you familiar with the rates on cotton-seed, generally, throughout the country over—

A. You mean rates between points in other states?

Q. 98. Yes.

279 A. I did at the time of the commission's hearing in this case; there was a schedule made up.

Q. 99. Are you prepared to state what the average rate is as compared with the Texas and Pacific?

A. It has been so long ago I am not able to state that; I have not seen the papers. My recollection is that these proposed commission rates were not as low as the rates between points in the State of Arkansas and points on the Y. & M. V. in Mississippi; I have forgotten how they shaped up on rates between points in the State of Texas and other territories, but there was a table offered to the commission that shows all that.

Q. 100. Do you know whether there is any movement of Gretna? cotton-seed by the Texas and Pacific that goes into Arkansas in connection with other lines?

A. No, sir; I do not know it to be a fact.

Q. 101. You do not know whether it is so or not?

A. No, sir.

By Judge GUION:

Q. 102. Do you know anything about the character of country through which the L. R. & N. R. R. runs?

A. I have been over it; yes, sir.

Q. 103. Are the conditions on that line or the country through which it passes the same as on the Texas and Pacific?

A. I should say they were worse at present on the L. R. and N., which passes through plenty of swamp, nothing but swamp it seems to me.

Q. 104. That is the railroad you spoke of just now as being the Louisiana Railway and Navigation Co., is it not?

A. Yes, sir.

Q. 105. Do you remember when that \$1.50 rate was taken out on the Port Allen branch or New Roads branch?

A. April, 1904; I think April 30th.

Q. 106. Has that mill with which you are connected been buying freely in that territory since then?

A. No, sir.

Q. 107. Had it bought freely there before?

A. Yes, sir.

Q. 108. What is the reason it does not buy there now?

A. Well, that is out of my department, but I presume that it is on account of the high rate.



Q. 109. But you know as a fact that they have not been buying there freely since that rate was made in April, 1904?

A. Yes, sir; they have operated on the Texas and Pacific  
280 in Avoyelles Parish and the main line stations, but not much from New Roads, not anything like it was before.

Q. 110. Have any of those rates that have been put in on the Avoyelles branch and other points you speak of, reached a maximum of \$3.00 a ton?

A. Some few points, very few; the maximum rate has been \$2.50.

Q. 111. Has this mill or factory at Gretna with which you are connected, been buying any cotton-seed at a rate over \$3.00 a ton for transportation?

A. Why, some little, from points——

Q. 112. On the Texas and Pacific, I asked you?

A. On the Texas and Pacific.

Q. 113. Yes.

A. No, sir.

#### Cross-examination.

By Mr. BRAGGINS:

X Q. 1. You stated that the rates for similar distances by the Texas and Pacific were higher than on the Y. & M. V.?

A. Mileage rates; yes, sir.

X Q. 2. What do you mean by mileage rates?

A. I mean where there are no commodity rates established.

X Q. 3. I would like to ask you about the actual rates that are in effect on the two roads, the rates that are charged by the two roads. I believe Mr. Hauser stated that the rate from Burnside was 10 cents?

A. Yes, sir.

X Q. 4. Now, that is 62 miles from New Orleans?

A. Yes, sir; about that.

X Q. 5. Now, Plaquemine, on our side of the river and on the Texas and Pacific, is 85 miles, is it not?

A. Yes, sir.

X Q. 6. Now, what is the rate from there?

A. \$1.25.

X Q. 7. That is 6¼ cents per 100?

A. Yes, sir.

X Q. 8. As against 10 cents on the opposite side of the river?

A. Yes, sir; from that section.

X Q. 9. Now, higher up on the Valley, you said the rate was 10 cents as far up as Angola?

A. That is on the L. R. & N.

X Q. 10. I mean Baton Rouge?

281 A. Yes, sir; up to the state line.

X Q. 11. Now, for 100 miles from New Orleans on the Valley the rate is 10 cents?

A. Yes, sir.

X Q. 12. Now, for 100 miles from New Orleans on the Texas and Pacific——



A. You mean the mileage rate?

X Q. 13. The actual rate, the railroad charges for the transportation of seed to your mill, say from Gros Tete, which is 101 miles?

A. That is 11 cents, I think—(witness looks at the tariff)—Gros Tete is 10 cents.

X Q. 14. Now, what is it from the next two stations above?

A. Rosedale and Maringouin are ten cents, Fordoche is 11 cents and Ravenwood.

X Q. 15. How far are they?

A. I think Ravenwood is 115 or 120 miles—117.

X Q. 16. Now, Mr. Ermon, what kind of a territory is that between Baton Rouge junction and Ravenwood for the production of cotton and cotton-seed?

A. I do not know that; that is not the principal cause for complaint by the Southern Cotton Oil Company; their principal complaint is the rate on the Port Allen branch; that is where the bulk of the business comes from.

X Q. 17. You have no complaint on the main line?

A. The principal complaint is on the Port Allen branch, advancing the rate from \$1.50 to \$3.00, practically putting them out and causing the average rate to be advanced. It is not one particular rate, it is the question of an average in a certain territory.

X Q. 18. You stated that the rate from the Port Allen branch was raised in 1904?

A. Yes, sir; in April.

X Q. 19. Do you know when that Port Allen branch or New Roads branch, as we call it, was built?

A. No, sir; I think it was built a number of years before that; I think it was built in 1901.

X Q. 20. It had been about three years up and it was changed?

A. That is the New Roads branch.

X Q. 21. I understood you to say a while ago that the \$1.50 rate had been in effect a great many years?

A. No, sir; I did not say that. I said for a number of years, I guess.

X Q. 22. A good while?

282 A. A good while.

By Judge FREEMAN:

X Q. 23. What is the name of the mill located on the Port Allen branch?

A. The New Roads Oil Mill.

X Q. 24. Is that the Fitzhugh mill?

A. Yes, sir; I think it is.

X Q. 25. This increase in the rate over the former rate of \$1.50 ensures to the benefit of that mill as I understand?

A. Yes, sir.

X Q. 26. And if the \$1.50 rate should be put back it would be a detriment to that mill, would it not?

A. It would create competition; our folks would go in there and buy seed then.

## Redirect examination.

By General MILLER:

R. D. Q. 1. The farmer would be benefited, would he not?

A. I suppose so, yes; the producer of the seed would be paid higher prices.

R. D. Q. 2. How far is Fordoche?

A. 117 miles, I think.

R. D. Q. 3. And is that on the main line?

A. That is a main line station.

R. D. Q. 4. How far is that from the Mississippi River?

A. That is not in the river territory; I think they might be near the Atchafalaya River.

R. D. Q. 5. What is the rate from Fordoche to New Orleans?

A. 11 cents.

R. D. Q. 6. Where is Glynn Station?

A. On the New Roads or Port Allen Branch?

R. D. Q. 7. How far is that from New Orleans?

A. 114 7/10 miles.

R. D. Q. 8. So it is nearer than Fordoche?

A. Yes, sir; and the rate is 14½ cents.

R. D. Q. 9. So, there is a difference there of 3½ cents per 100 pounds?

A. Yes, sir.

R. D. Q. 10. And against the nearer point?

A. Yes, sir.

283 R. D. Q. 11. One is on the main line, Fordoche, and the other is on this Port Allen branch?

A. Yes, sir.

R. D. Q. 12. Do you know of any other discrepancies in rates for relative distances along that line?

A. All those stations are about the same as Glynn and Chamberlain; they are all mileage rates in there. We figure about 15 cents, 14½ to 15 cents from all those stations.

By Judge GUION:

R. D. Q. 13. Which makes a \$3.00 rate per ton?

A. Yes, sir.

R. D. Q. 14. Do you know where the cotton-seed come from that are shipped from Burnside to New Orleans?

A. No, sir; they are hauled from back in the country; I think that seed now will come in over the L. R. &amp; N. from Gonzales.

R. D. Q. 15. Do you know the distance from Gonzales to Burnside?

A. No; I understood about 7 or 8 miles.

At this stage of the proceedings the taking of testimony was continued until May 21, 1907, at 10 o'clock A. M.

NEW ORLEANS, May 22, 1907.

GEORGE G. BRADSHAW, witness, recalled on behalf of defendant, testified as follows:

Direct examination.

By Judge GUION:

Q. 1. Please examine this statement which I now show you and state what that statement is?

A. This is a statement of the receipts of cotton-seed by the Standard Cotton Seed Oil Company for the past ten years from stations on the Texas and Pacific Railroad and landing on the west bank of the Mississippi River between Hard Times and Port Allen.

Q. 2. Is that statement correct?

A. Yes, sir; that is a correct statement from the books.

Q. 3. Made by you?

A. Yes, sir.

Q. 4. Copied by you from the books?

A. Copied from the books of the Standard Cotton Seed Oil Company.

284 Offer: I offer in evidence this statement, marked D-21, in connection with the testimony of the witness.

NEW ORLEANS, May 22nd, 1907.

W. M. BARROW, witness, recalled on behalf of defendant, testified as follows:

Direct examination.

By Judge GUION:

Q. 1. In the testimony given by Mr. Bradshaw a few days ago he spoke of the investigation of the Progressive Union Hall in the City of New Orleans, on the subject of the rates on cotton-seed in this state, which, I judge from the testimony given by him, was dismissed. Is that correct?

A. That is correct.

Q. 2. Will you please state what that investigation involved. At whose instance it was made, brought about?

A. The first proceedings against the T. & P. Railroad and other railroad companies operating in Louisiana, to have the rates on cotton-seed reduced, was instituted by the Standard Cotton Seed Oil Company of New Orleans in the year 1904. This complaint was filed September 23, '04. After a hearing the commission dismissed the complaint, deciding to take up each complaint regarding rates on cotton-seed separately, and adjust them on a mileage basis. This is the commission's Order No. 406 issued November 15th, 1904, a copy of which I will furnish and file in connection with this testimony.

Q. 3. Was that the proceeding at the Progressive Union Hall in this city?

A. That was the first proceeding on this at the Progressive Union Hall. The second proceeding was a general proceeding on the part of the Railroad Commission of Louisiana against all the railroads operating in Louisiana, which was based on the complaint of the Standard Cotton Seed Oil Company and the commission's Order No. 406 referred to before. The result of this hearing and investigation was the issuance of an order by the commission declining to establish the rates proposed in the circular calling the hearing for all the railroads in the State of Louisiana, and indicating that the commission would take up complaints as they arose, separately, against each railroad company. This is Order No. 457 of the Railroad Commission of Louisiana which was issued July 11th, 1905, which reads as follows:

\* \* \* \* \*

Railroad Commission Order No. 457, heretofore printed at page 30.

By order of the Commission, Baton Rouge, La., July 11, 1905.

[SEAL.]

C. L. DE FUENTES, *Chairman*;  
W. L. FOSTER,  
OVERTON CADE,

*Commissioners.*

A true copy.

W. M. BARROW, *Secretary.*

Q. 4. Well, then, what brought about the issuance of the order that is now attached?

A. After the commission had issued its Order No. 457, just before quoted, a petition and complaint was filed with the commission by the Long Bridge Cotton Oil Company against the Texas and Pacific Railroad Company, asking that the commission adopt the rates which had been formerly proposed by the commission for all railroad companies in the State of Louisiana, and which the commission had declined to adopt as a uniform mileage tariff for all railroads in Louisiana, for the Texas and Pacific Railway. The result of this investigation was the adoption by the commission of Order No. 484, the one now in contest.

Q. 5. Is the Long Bridge Cotton Oil Mill a country mill?

A. Yes, sir.

Cross-examination.

By Judge FREEMAN:

X Q. 1. Is it not a fact that the rates proposed in the first hearing, the hearing you have designated as the hearing at the Progressive Union Hall, is it not a fact that those rates and the rates that were put in effect by the commission at the last hearing are identically the same rates?

A. The rates are the same as proposed, except that the hearing at the Progressive Union Hall contemplated the adoption of the rates for all railroads in the State of Louisiana.

286 X Q. 2. And that hearing was dismissed?

A. The hearing was dismissed for the reasons stated in the order and given above.

X Q. 3. And the last hearing was as against the Texas and Pacific and the same tariff of rates that was proposed at the first hearing was made effective as to the Texas and Pacific Railway?

A. That is correct.

NEW ORLEANS, *May 22nd*, 1907.

W. N. McFARLAND, witness, sworn and examined on behalf of defendant, testified as follows:

Direct examination.

By Judge GUION:

Q. 1. What is your name?

A. W. N. McFarland.

Q. 2. What is your official position?

A. Secretary of the State Board of Appraisers.

Q. 2. Have you got in your possession the original assessment of the Texas and Pacific Railroad property in this state, for the years 1903, 1904, 1905, and 1906?

A. I have the original reports made by the Texas and Pacific Railroad.

Q. 3. Sworn to?

A. Yes, sir.

Q. 4. By whom?

A. 1903, 1904, 1905 and 1906 by Robert Strong, general agent. 1907 by W. H. Abrams, the Tax Commissioner.

Q. 5. 1903, 1904, 1905 and 1906 sworn to by Major Strong?

A. Yes, sir.

Q. 6. And 1907 by Mr. Abrams?

A. The Tax Commissioner.

Q. 7. What is the valuation put upon the railroad property, main line, per mile for the — 1903, sworn to by Mayor Strong?

A. For 1903, main line, \$10,000 per mile.

Q. 8. What is the valuation placed by him upon what is called the Port Allen branch?

A. \$4,000 per mile.

Q. 9. Will you please look at the report of 1904, and state  
287 what the valuation is, placed by him upon the main line of that railroad in this state and also upon the Port Allen branch?

A. Main line, \$10,000 per mile; Port Allen branch, \$4,000 per mile.

Q. 10. Is that the same for 1905. Please look at 1905?

A. 1905, \$10,000 per mile for the main line and \$4,000 per mile for the Port Allen branch.

Q. 11. And 1906, how does that correspond?

A. \$10,000 per mile for the main line and \$5,000 per mile for the Port Allen branch.



Q. 12. That is what you call the Port Allen branch?

A. That is from the junction to Port Allen.

Q. 13. That is from Baton Rouge junction to what point?

A. To Port Allen, that is the taxable part, to Port Allen.

Q. 14. The rest of the road, north of Port Allen, has been built since the exemption period?

A. Yes, sir; and for our convenience we call it the Port Allen to Ferriday branch.

Q. 15. Will you please examine the statements concerning which you have testified and see whether or not the Texas and Pacific Railroad Company was asked to make a statement as to the cost of construction of its road in the State of Louisiana, and what their answer was during each of those years?

A. You want for each year?

Q. 16. Yes; 1903, 1904, 1905 and 1903.

A. The question was to give the estimated cost of road per mile complete, the answer is unable to answer. That is for 1903.

Q. 17. Was the same question put and the same answer made for 1904?

A. Yes, sir; same question and same answer.

Q. 18. Was the question asked and the same answer given in 1905, and also in 1903?

A. Yes, sir.

Q. 19. Those reports are sworn to by Major Strong?

A. Yes, sir.

Q. 20. He was the general agent of the Texas and Pacific in Louisiana?

A. Yes, sir.

No cross-examination.

288 Capt. CHARLES J. BACHINO, witness, sworn and examined on behalf of defendants, testified as follows:

Direct examination.

By Judge GUION:

Q. 1. What is your name?

A. Charles J. Bachino.

Q. 2. Where do you live?

A. I live here in New Orleans.

Q. 3. What is your business?

A. I am the purchasing city agent of the Standard Cotton Seed Oil Company.

Q. 4. What is the territory in which you operate in the purchase of cotton-seed for this company?

A. South of Vicksburg to New Orleans on the Mississippi River.

Q. 5. On what bank of the Mississippi River?

A. On the west bank.

Q. 6. At all points where cotton-seed may be bought in Louisiana?

A. Yes, sir.

Q. 7. How long have you been engaged in this business of purchasing seed for this company?

A. For the Standard Cotton Seed Oil Company?

Q. 8. Yes.

A. About nine years.

Q. 9. Where do you buy your seed, at what points?

A. All the way down from Vicksburg down, south of Vicksburg on the river front.

Q. 10. In Louisiana?

A. In Louisiana.

Q. 11. Did you ever buy at any time cotton-seed for the company referred to, along the line of the Texas and Pacific Railroad?

A. No, sir.

Q. 12. You never bought any on the Port Allen branch?

A. No, sir.

Q. 13. Where are the points further south then at which you bought?

A. You mean on the Mississippi River front?

Q. 14. Yes.

A. Well, all the way down, from Vicksburg down, wherever these landings touch the Mississippi River, at Mississippi River points. I never operated on the railroad.

280 Q. 15. You never have bought right along the line of the railroad?

A. No, sir.

Q. 16. Your purchases have been on the Mississippi River?

A. Yes, sir.

Q. 17. On what kind of transportation?

A. We have steamboat transportation, we have boats and barges.

Q. 18. Water transportation?

A. Water transportation.

Q. 19. Well, what are the points at which you have bought cotton-seed on the Mississippi River for the company that you are buying for?

A. Well, in Tensas Parish I have bought from Hard Times landing, St. Joseph, Goldman, Stock Ridge, Water Proof, L'Argent, Bullitts Bayou. That puts me from Tensas Parish all the way down to Vidalia. Now, below Vidalia we have bought from Bowie Point, we have bought from Deerpark, Fairview, Bougere, Fish Pond, Black Hawk, Nocks. That takes us all the way down to the lower end of Concordia Parish.

Q. 20. Further down south from Concordia Parish, where have you bought?

A. I have bought from Torras Landing, Red River, Smithland, Raccourci, Fardoche landing, Brunswick Point, St. Maurice, Pointe Coupee landing, Lakeland, Cook's, Alto, Devalla. That winds up in West Baton Rouge.

Q. 21. That brings you down to the furthest point south that you have been buying seed?

A. Yes, sir.

Q. 22. Now, as I understand it, your purchases of seed have been for the purpose of river transportation?

A. Yes, sir.

Q. 23. Such seed as would be brought to New Orleans by boat or barge?

A. Yes, sir.

Q. 24. Where were those seed brought from to the river at these various points at which you purchased them? From the interior or immediately on the river?

A. In the immediate neighborhood.

Q. 25. Of these river points?

A. Yes, sir; some of those gins are located right behind the levee.

Q. 26. Are some of these places that you have named on the river front, parallel- by the Texas and Pacific Railroad?

A. Some of them.

200 Q. 27. How far is the farthest point north, that is parallelled by the Texas and Pacific, that you can recall?

A. The farthest point?

Q. 28. Yes.

A. You mean from—all the way from the first landing that I have mentioned?

Q. 29. From Devalls, north?

A. I suppose the station at Devalls is  $\frac{3}{4}$  of a mile from the landing, from the Mississippi River landing.

Q. 30. What are the other points that you have mentioned, where the Texas and Pacific-parallel the river and the distances from those points, as near as you can name them from the railroad?

A. I suppose at Fardoche landing it is a mile and a half from the station to the Mississippi River landing.

Q. 31. You mean the station on the railroad?

A. Yes, sir; the station at Terras I should judge is a mile and a half from Red River landing.

Q. 32. Which is on the Mississippi River?

A. Yes, sir; at Nocks and Black Hawk, I suppose the distance is half a mile. At Bougere it is, I suppose two miles and a half from the river.

Q. 33. You say your purchase- have been made in the immediate neighborhood of these shipping points on the river?

A. Yes, sir.

Q. 34. Have your purchases fallen off at these points, within the last few years?

A. Yes, sir.

Q. 35. To what do you attribute the falling off?

A. Well, we have got a rate of \$2.00 a ton on the packets, the steamboats, we did have a rate of \$1.50 on the T. & P., but that rate is not in existence now and it was customary for those local mills on the line of the road to pay as much money for seed as we pay on the bank of the river, and with a cheaper rate of freight, why, the local mills have been able to get the seed. That is one of the reasons.

Q. 36. Well, has the seed been going from the river to the points along the railroad?

A. Yes, sir; several cases.

Q. 37. What is the freight rate on the river that prevails now for the transportation of seed?

A. We have a rate of \$2.25 south of Vicksburg to Red River Landing, \$2.50 a ton, and we have a rate of \$2.00 south of Red River to New Orleans.

291 Q. 38. Do you know what the railroad rate is at those points?

A. I do not.

Q. 39. What is the proportion in the falling off of seed that you can figure on, as being the difference between what your purchases were prior to the change in the rate of \$1.50 and the present transportation charges?

A. Last season we handled 387 tons from Hard Times to Natchez; the season before that we only handled 55 tons. In 1905 we handled 2,774 tons in the same territory, between Natchez and Hard Times. In 1903 and 1904 we handled 2,774 in the same territory, a distance of 60 miles on the west bank. In 1902 and 1903 we handled 6,293 tons. In 1901-02 we handled 9,328 tons in the territory between Natchez and Hard Times which is, I suppose, 65 miles on the west bank of the river which includes Tensas Parish and Concordia Parish.

Q. 40. What railroad parallels the river there?

A. The M. H. & L.

Q. 41. Does that connect with the T. & P. at Ferriday?

A. Yes, sir.

Q. 42. Is it part of the same system?

A. Yes, sir.

Judge FREEMAN: There is no connection between the two as a system; there is no system about it. I will object to that.

Q. 43. Have you any memorandum of the purchases south of Ferriday?

A. Well, south of Baton Rouge that takes in from Red River Landing to Natchez, in 1907-07[08] we handled 1,302 tons.

Q. 44. Between what points?

A. Between Vidalia and Red River Landing on the west bank, which takes in Concordia Parish. In 1905-06 we handled 270 tons; in 1904-05 we handled 706 tons; in 1903-04 we handled 45 tons; in 1902-03 we handled 1,176 tons.

Q. 45. What was the rate on the Port Allen branch up to 1904?

A. I think it was \$1.50 a ton. We used to handle seed from Lettsworth station, one of our largest customers was there, and I think the rate on his cotton-seed was \$1.50, he is a thousand-ton shipper. Then, I may say that since those rates have been put up he has been shipping his seed to the local mills around that territory, we have  
292 not handled any of his business since.

Q. 46. Are there any other points on the road further south that you can recall, where the same condition of things exist or has existed, where you have not been able to buy seed?

A. Well, there are several points in Tensas Parish.

Q. 47. No; that is north?

A. That New Roads country, we used to buy a great deal of seed from that New Roads territory, it used to be hauled out at Cook's and



Hermitage. We don't buy that seed now because it is hauled to that interior mill at New Roads on that line. It is too much of a haul to haul that seed to the river points at the same price, especially when those local mills pay the same amount of money at the stations as we do on the river bank.

Q. 48. What is the haul to the river?

A. It varies there from 3 1/2 to a mile and a half.

Q. 49. Then, you are not buying in that territory at all now?

A. No, sir.

Q. 50. Do you know when that mill was put up at New Roads?

A. I suppose five or six years ago, I don't know exactly.

Q. 51. That seed came to what point on the river?

A. That New Roads territory seed?

Q. 52. Yes.

A. It came to Alto Landing and Cook's landing and False River and Red River.

Q. 53. On a wagon haul how much was it?

A. From 3 1/2 to 1 1/2 miles.

Q. 54. 3 1/2 miles at the outside?

A. Yes, sir.

Q. 55. And now you do not buy any of that seed?

A. No, sir.

Q. 56. Is three miles and a half a long haul?

A. Yes, sir; it is a pretty good haul, especially when those fellows are up there busy chopping out cotton, you know, they wouldn't haul for anything; you couldn't pay them \$1.50 a ton to haul seed.

Q. 57. Do you buy any seed at Torras?

A. I have not bought any seed at Torras for two or three years.

Q. 58. Did you buy before?

A. Yes, sir.

293 Q. 59. Did you buy before the \$1.50 rate was taken out?

A. I bought several shipments there; yes, sir.

Q. 60. Ever buy at Batchelor?

A. No, sir; there is a mill situated right there at Batchelor.

Q. 61. You never have bought there?

A. No, sir.

Q. 62. Do you know what rate—if you don't know don't state it—you could go into that territory along the T. & P. road and buy cotton-seed, what would be the rate per ton at which you could compete with the interior mills?

A. I think the rate that the commission gives would be a fair rate, we could operate on that rate.

Q. 63. Can you buy at the rate that is now prevailing?

A. No, sir.

#### Cross-examination.

By Judge FREEMAN:

X Q. 1. Does your statement show the amount of seed you bought for the last season, 1906-07?

A. Yes, sir.



X Q. 2. Will you give that to us from the various points you mentioned there?

A. You mean from south of Hard Times on the west bank of the river?

X Q. 3. South of Vidalia?

A. We bought 1,302 tons during 1906-07. That is from Vidalia to Red River Landing.

X Q. 4. How about south of Red River Landing?

A. To Port Allen?

X Q. 5. Yes.

A. We bought 2,929 tons.

Redirect examination.

By Judge GUION:

R. D. Q. 1. Is not that about the best cotton producing territory in the state, along there?

A. Yes, sir; there was an awful big crop made in that territory last year, all the way down from Pointe Coupee to West Baton Rouge.

R. D. Q. 2. Does the T. & P. run right through the heart of it?

A. Yes, sir; I have no idea exactly how much cotton is made in Pointe Coupee or West Baton Rouge. I know that 294 Pointe Coupee is one of the biggest cotton parishes we have got in the State of Louisiana, but I have no idea how much cotton they make there. If I knew how much cotton was made in the parish I could tell what proportion was seed.

R. D. Q. 3. Is cotton production increasing in that section?

A. Well, yes; they are clearing up lands all the time and planting more cotton.

CHARLES W. DROWN, witness, sworn and examined on behalf of defendants, testified as follows:

Direct examination.

By Judge GUION:

Q. 1. What is your name?

A. Charles W. Drown.

Q. 2. Where do you live?

A. In New Orleans, Louisiana.

Q. 3. What is your age?

A. My nearest age is 58.

Q. 4. What is your business now and what has it been for several years back?

A. I am in the water traffic business, freight traffic business, for a number of years, over 40 years.

Q. 5. Engaged in steamboating?

A. Yes, sir; steamboat collections. I have not been on the river but I have been connected with the river?

Q. 6. Have you also been and are you now engaged in or interested in any cotton-seed oil mill?

A. I was up to three years ago, and I unfortunately have a plant here now that has not been operated for several years.

Q. 7. What is the name of it?

A. The Delta Linting and Refining Company.

Q. 8. What is the character of that business?

A. Crushing cotton-seed. Making cotton-seed products cakes.

Q. 9. Fertilizer?

A. Well, making cake, oil, lint and hulls.

Q. 10. You spoke a moment ago of being unfortunately connected with that oil mill?

A. Well, for the reason that for the last three years the receipts of seed have not been large enough in New Orleans to justify operation of the mill.

295 Q. 11. It has not been a revenue producing mill then for the last three years?

A. No, sir; it has not been for some time.

Q. 12. What has that been owing to?

A. It has been mainly owing to the scarcity of seed and the necessarily high price in competition with the interior mills, making the seed so high it could not be crushed at a profit.

Q. 13. Do the freight rates figure in that matter at all?

A. The scarcity of the seed is caused, to the best of my knowledge, from the number of interior mills located in parts of the country where New Orleans formerly drew their supply of seed.

Q. 14. You say where New Orleans formerly drew its supply of seed, do you mean to say that they do not draw their supply of seed from there now?

A. Yes, sir.

Q. 15. What is the cause of your not buying seed in the same territory into which you went formerly?

A. The reason I cannot is on account of the rates of freight that are made from what you call nearby points to these interior mills on the various lines of railroad, hauling the seed in for what they call a reasonable rate so as to get the hauling of the product out again, and thus combining the two making a remunerative rate of freight for the railroad in handling it in and out.

Q. 16. Let us take the complainant company in this case, for instance: what is the territory into which you formerly went and from which you purchased the seed that came to your mill here in New Orleans, that you are now excluded from?

A. The main line of the T. & P. from Shreveport, south. I suppose New Orleans used to get seed, commenced within 40 miles this side of Shreveport they could handle seed to New Orleans.

Q. 17. 40 miles south of Shreveport?

A. Yes, sir; commencing 40 miles, I have known seed to be handled nearer to Shreveport, but there is a mill at Mansfield, Louisiana, which draws considerable of that territory seed. Now, as to the rates of freight into those interior mills, if it is admissible, I can only state what I heard in the testimony at the Progressive Union Hall on Camp Street several years ago, my recollection of that case is that the average rate to the interior mills was about \$1.00 a

ton and the average haul on seed not to exceed 50 miles.  
296 That is my recollection of it, I don't know whether I am exactly correct or not. Some of the rates were lower and some higher, but the average was \$1.00 a ton. I think, to be precise, a gentleman from St. Joseph, Louisiana, stated it was 98 cents, but they generally agreed on \$1.00.

Q. 18. What is the distance from New Orleans to the territory into which you formerly went for the purchase of seed for your mill?

A. Shreveport is 325 miles and we used to buy seed, as I say, within 40 miles. I think I have memorandum here. Shreveport is 326 miles, according to the railroad guide; Mansfield is 290 miles; Natchitoches is 250 miles. These other points I speak of came in between Mansfield and Alexandria. There is a mill at Mansfield and one at Natchitoches. Natchitoches is on a little branch road and there is also a mill on that road at Lake End. The Lake End seed until that road was built all came to New Orleans by river. Now, none of it is handled by river at all, for the reason there is a mill right there and has been for four or five years. The mill was built there before that branch road was built.

Q. 19. Take those points on the Texas and Pacific road, away from the river, to which you formerly went and bought seed?

A. All the way down the road from about Mansfield which is 36 miles this side of Shreveport.

Q. 20. Ever buy seed in the neighborhood of Bunkie?

A. Yes, sir.

Q. 21. And between Bunkie and Fordoche and along in that section?

A. Yes, sir; we used to get seed from Bunkie, Morrows, Palmetto, Grosse Tete.

Q. 22. Do you get any from that section, now?

A. Very little, because it is nearer to Bunkie than to New Orleans; also, there is a mill built in that territory, the Long Bridge Mill and that seed mainly goes to those two mills.

Q. 23. Long Bridge is complaining of the rate that is now in and asked the commission to make the change which was made? Now, Captain, have you ever bought any seed along what is called the Port Allen branch?

A. Yes, sir; I bought seed some years ago at New Roads or near New Roads; I bought the crop one year of Rogans—I think that is the name, at any rate. I bought his seed one year, 700 tons.

Q. 24. How did you bring that, by the Texas and Pacific?

A. Yes, sir.

297 Q. 25. What freight did you pay on that?

A. \$1.50 a ton.

Q. 26. How far is New Roads, do you know, from New Orleans?

A. I have a memorandum here I made sometime ago of the distances; New Roads is 122 miles.

Q. 27. Do you know what the freight rate is now as charged by the Texas and Pacific Railway Company?

A. You mean the rate now being charged?

Q. 28. Yes, from that point?

A. About 15 cents a pound or \$3 a ton; that rate was changed several years ago from \$1.50 to either \$3 or \$3.10—in the neighborhood of \$3 a ton.

Q. 29. From your connection with the mill that you have been connected with, what is the price at which you can buy, going into the territory along the Texas and Pacific; I mean by that the freight rate you can afford to pay to carry on your business. What is the highest freight rate you can afford to pay to carry on your business?

A. This matter has been discussed and there have been several propositions made as to rates. The Standard Cotton Seed Oil Company several years ago made an application for a mileage rate and there were several submitted; finally—I have a copy here of the one put into effect by the Commission, which I understood from the various mills here that the rate of freight on cotton seed was satisfactory; that makes a maximum of 15 cents per 100 pounds anywhere in the state.

Q. 30. That would be \$3 for 200 miles?

A. Yes sir, or over; it would be \$2.90 for 190 miles.

Q. 31. Now the rate that you are speaking of is the rate that the Railroad Commission proposed to put in?

A. Yes sir, that is the rate they propose to put in, but I do not know whether it is put in.

Q. 32. It is not put in because the Texas and Pacific has enjoined it. Have you studied that tariff of rates at all?

A. I have, more particularly on cotton seed.

Q. 33. That is what I mean?

A. Yes sir.

Q. 34. From your examination and study of it are you willing to state that it is reasonable in itself that tariff?

A. That is a question. The first item on here is ten miles or less at three cents per 100 pounds; that is sixty cents a ton. Now Mr. Bryan, of Alexandria, stated before the Commission that the lowest rate he had was Seips Switch, which he said, I think, 208 was about six miles. It is less than ten miles, anyhow.

The rate by the Commission for ten miles or less is three cents, so that would be one-half cent per 100 more than they formerly—but that was a special point. I understood from all parties that that seed could be hauled to Alexandria by wagon unless there is a very low rate of freight put in; for that reason there was a rate of fifty cents a ton from Seips Switch, which was a very short distance. Now the rate on cotton seed, it looks to me like a fair rate; in fact it is with not any great change in it from what the Texas and Pacific were charging on seed on their own line, if I recollect the rate from south of Shreveport was 17½ cents, that is what it is—

Mr. BRAGGINS: Well, for certain distances the tariff shows.

A. This would make that maximum rate fifteen cents—that is, the Commission's Order is fifteen cents.

Q. 35. Now, you have that Order of the Commission—been examining it, I say—and made some study of it, have you not?

A. Yes sir.



Q. 36. Do you think it is a reasonable rate?

A. On cotton seed?

Q. 37. On cotton seed?

A. Well, it looks to me like a reasonable rate.

Q. 38. If that rate was put in and that Order of the Commission enforced, would you be able to go into that territory from which you say you have been excluded for sometime back?

A. I think so.

Q. 39. The rate then would permit you to go there and bring seed to your mill?

A. Yes sir.

Q. 40. Do you know anything at all about the character of the country through which the Louisiana Railway and Navigation Company runs?

A. I have been over the road several times between Alexandria and Shreveport; I do not know anything about it south of Alexandria.

Q. 41. Do you know the character of country through which it runs there?

A. From Shreveport to Alexandria?

Q. 42. Well, from south of Alexandria?

299 A. From south of Alexandria to the crossing of Red River, what is known on the river as Water Valley, it runs through—

Q. 43. Does it run through any different kind of country from Alexandria south, or from Alexandria north as far as Shreveport, than the Texas and Pacific railroad?

A. It parallels.

Q. 44. It parallels it?

A. Yes, sir, from Shreveport and Alexandria the Louisiana Railway and Navigation Company is on the east bank of the river and the Texas and Pacific Railway Company is on the west side of the river, not altogether on the river because the main line after you leave Boyce, the main line does not touch the river again until you get to Shreveport, and after you leave Alexandria going south the main line diverges from the river down through Cheneyville and Bunkie.

Q. 45. When it comes down as far as Atchafalaya?

A. It parallels the river to a great extent from Melville down, but away from the river; it is back some distance; at some points it is nearer than at others.

Q. 46. Do you know the country through which both roads run?

A. Yes sir.

Q. 47. Any difference in the character of the country through which the roads run as to swamp, swampy character and highland character, etc.?

A. I know some years ago in high water the Texas and Pacific had a great deal of trouble in the Fardoche swamps during high water, but that has been to a great extent relieved by the building of levees on the river front.

Q. 48. What I want to know is, if you are able to testify as to whether or not there is any difference in the character of country,



the conditions surrounding, as far as you have observed, between the two roads on their way down from Shreveport to Alexandria?

A. No sir, I should say not; they both pass through a country which has been a very expensive country, from what the officials of the road have told me, of either road, on account of the alluvial soil, and the difficulty in maintaining the proper condition of the road.

Q. 49. But about the same character?

A. About the same character. I know nothing about the Louisiana Railway and Navigation Company's road from Angola here; I never was over that part of the road.

Q. 50. Don't you know that the Louisiana Railway and Navigation Company, from Baton Rouge down, runs through an almost entirely swamp country?

A. I only know it from hearsay; they claim that they run through a territory back from the Amite river that is swampy in its nature, but I have never been over the road.

Q. 51. It goes back some distance from the river?

A. Yes sir.

Q. 52. Is not all the country down from Baton Rouge back from the river of a swampy character?

A. Yes sir, but the Louisiana Railway and Navigation Company is the only road that is built through that part of the country.

Q. 53. I say the Louisiana Railway and Navigation Company's road is built through that part of the country?

A. So they claim; I have never been over it; I do not know of my personal knowledge.

Q. 54. What is the rate that that road is charging on cotton seed—their maximum rate?

A. Fifteen cents per 100 pounds, but they have never, to my knowledge, made a mileage rate. The rate anywhere between Shreveport and Alexandria has been fifteen cents; that has been their regular rate from any point below Shreveport through to New Orleans, 15 cents per 100 pounds, but all of that will be over 200 miles from here—at least, Alexandria is 194 miles, and that would be—

Q. 55. Now, as comparing the two roads together, which one of those roads in that section of the country runs through the better cotton producing country?

A. The Texas and Pacific Railway Company.

Q. 56. Do you know anything at all about the character of country through which the Yazoo and Mississippi Valley railroad runs in this state?

A. It is a very good part of the country, I believe; I do not know of any swampy country on the Yazoo and Mississippi Valley; they have had, of course, a great deal of trouble with crevasses on the Mississippi river south of Baton Rouge.

Q. 57. They run through an alluvial country, do they not?

A. As far as Baton Rouge; at Baton Rouge they branch off towards hilly country.

Q. 58. Does not the Yazoo and Mississippi Valley strike quite

a hilly country after it reaches a short distance above Baton Rouge, on the east bank?

A. I think it strikes a considerable grade; I think it strikes some portions of it.

Q. 59. Do you know of any reason that would suggest  
301 itself to your mind why there should be a lower rate on the Yazoo and Mississippi Valley railroad in this state from the furthest point north, before you reach the State of Mississippi than a like distance on the Texas and Pacific?

A. It occurs to me that the rates of freight should be the same, practically the same mileage rate.

Q. 60. Have you ever been on the Yazoo and Mississippi Valley railroad north of the Louisiana line, in Mississippi?

A. I have been to Vicksburg over that road, but traveled it at night. I do not know anything about that; I know it goes through a pretty good cotton country.

Q. 61. It is an alluvial country, is it not?

A. Yes sir, it must be alluvial soil to be a good cotton country, I should imagine; I never went over that part of the road in the daytime; I do not know anything about that; I have been as high as Harrison in the day time; that is where you branch off to go to Natchez.

A. 62. Have you ever traveled over the Illinois Central in this state and in Mississippi?

A. Yes sir.

Q. 63. How far north have you been on that road?

A. I have been to Chicago and St. Louis.

Q. 64. Have you ever passed through the state of Mississippi in the day time?

A. Yes sir, I do not know that I paid any special attention, however, to the character of country, except that it seemed to be a rich, producing country.

Q. 65. Did you observe anything that suggested itself to your mind as a reason why there should be a lower rate on that road in Mississippi than on the Texas and Pacific in Louisiana?

A. Well, I am not a railroad man, but it occurs to me that the character of the country was pretty much the same, and that the rate of freight on one would be profitable to that road if it were used on the other.

Q. 66. Captain, I understood you to say a moment ago that your mill had not been a money-making mill for the past few years?

A. Yes sir.

Q. 67. Did you attribute that to the fact that you have not been able to get seed enough to make it a going concern?

A. I have not been able to get seed enough at the price at which I could afford to operate it; in fact, I have been trying to sell the plant.

302 Q. 68. Has there been any falling off in the past few years in seed brought to New Orleans from points where you said you bought from at a certain time?

A. Yes sir, the falling off has been very material.

Q. 69. Please examine that and see if you can testify as to the (counsel hands witness a certain document)——

A. This is the record for the past seven or eight years.

Q. 70. Would you be willing to put that in evidence, that letter of yours to Mr. Barrow?

A. Yes sir. I would state that this was written by me, asking for some information in regard to the receipts of seed. This is the official record of the receipts of seed, the total receipts in New Orleans, of these various years.

Q. 71. And it shows a letter dated April 17th, 1907, to Mr. Barrow, of the Railroad Commission, giving him the information asked concerning the receipts of seed in New Orleans?

A. Yes sir. Mr. Barrow asked me if I had any means of showing him the receipts of the various years, and I told him, being in the transportation business, I had kept a record of it and could give him the totals, and that commenced from July 1, 1899, down to July 31, 1906.

Q. 72. You haven't any separate statement?

A. No sir; I have the total receipts for New Orleans. It runs as high as 106,00 tons down to 21,000 tons.

Offer—Judge GUION: In connection with the testimony of the witness, I offer in evidence the letter written by the witness to Mr. Barrow, Secretary of the Railroad Commission of Louisiana, marked D——

A. You understand these are the total receipts from all sources from all mills; this is the cotton seed record for each year; now this year, of course, is not closed up yet. In this letter to Mr. Barrow of April 17, 1907, he asked me what I thought would be the receipts of this year, and I answered him the indications were about 42,000 tons, but it will exceed that; it will probably go to 45,000 tons, at that time it did not look to me like more than 42,000 tons, but some seed have been brought in by barges since that which will run the total up to 45,000 tons; that is for the past cotton seed season. That is dated each year from the last of August until the 31st of July.

Q. 73. Have you ever calculated or figured on the results of a shipment made to New Orleans in respect to the revenue that the Texas and Pacific would get on the long haul of cotton seed, and a shipment to a local mill on the revenue it would receive  
303 from the in haul of the seed and the out haul of the product?

A. I have figured it, not in regard to the Texas and Pacific but as to all lines of railroad. I never picked out the Texas and Pacific particularly to figure it, but just taking, as I said a while ago, the testimony before the Commission held here several years ago, showed an average of about \$1 a ton into the mills. Now that ton of seed would pay \$1 a ton in, and under the proposed rates of the Commission, leaving out the hulls, which I understand in the country, in the main, are consumed at home, but leaving them out, the present rate would give about \$1.14, or about that, for a haul of the product out, which would make \$2.14, and

if the hulls were shipped, it would make a total of \$2.70 for the in and out. Now I have figured this with railroad people, but they do not agree with me in it. Of course, I claimed they would haul about 3,100 pounds for \$2.70 on this basis; but if they haul 3,100 pounds at 15 cents per 100 pounds for the mills in New Orleans, it would pay them over \$4. But they do not agree with me on that.

Q. 74. What is the distance you figure on there for the haul on cotton seed?

A. About 15 cents, \$3 a ton; I figure \$3 for a haul of 2,000 pounds; a little less than \$3 for 1,800 pounds. You know, Judge Guion, I am not offering any special testimony, but it probably might be well enough to know what is made out of a ton of seed—

Judge FREEMAN: That has been testified to.

A. You know there is a whole lot of waste to be paid for, a whole lot of dirt, about 150 pounds of waste. I have gotten an average from some of the mills—you frequently get seed you do not lose over 5% out of, and then you get them again and lose as high as from 10% to 20%. I think the average is 150 pounds; that is 7½%.

Q. 75. You take a ton of cotton seed hauled in to a point, and the product hauled out, what is the weight of the product?

A. Leaving out the hulls, about 800 pounds of cake, 300 pounds of oil and 30 pounds of lint, 1,130 pounds exclusive of the hulls, about 700 pounds of hulls, made out of a ton of seed, and the balance is dirt and waste; about 170 pounds, I figure it.

Q. 76. Do you know anything at all about the manner in  
304 which producers of cotton seed along the line of the Texas and Pacific dispose of their seed, whether they keep them or dispose of them rapidly?

A. The majority of them endeavor to dispose of them as they gin them, provided they can get the transportation to move them.

Q. 77. What is the cause of that; is it because they are perishable?

A. It is perishable stuff, yes sir.

Q. 78. Is it not a fact that there is only a certain season they will keep, a certain period, rather, they will keep?

A. It has been generally conceded that the seed ginned the first thirty days ought to be marketed as quickly as possible on account of its moisture; it will heat.

Q. 79. And that deteriorates it?

A. Yes sir, deteriorates it, of course.

Q. 80. There has been some evidence given by a witness for the complainant in this case, that because these seed move rapidly on the rates that are now in, that that is an evidence that the rates are reasonable; do you consider that a correct estimate of what is a reasonable rate in respect to cotton seed?

A. Well, I do not know what the—

Q. 81. Would not they move anyway on account of their perishable character?

A. I think it would be to their interest to move them as soon as possible.

Q. 82. In other words, don't you believe that the producers of cotton seed, where they have no means of storing them, would dispose of them even at a less price than would be remunerative?

A. A planter claims he does that, I do not know how correct it is; the planter claims very often he has to sell the seed for less than he wants to on account of its perishable character. You see it depends a good deal on the season, a wet season making the seed a great deal worse than a dry season for transporting it or keeping it.

Q. 83. They don't last long after they are ginned?

A. No, sir, particularly early in the season, the first thirty days of the season.

Q. 84. You have examined the rates that the Railroad Commission proposes to put in, and I understand you to say, *and I understand you to say* that you have examined them carefully; do you believe that if this Order of the Commission is carried out and enforced that the adoption of that Order will have the  
305 effect of giving to the oil mills in New Orleans and Gretna any advantage over the mills located in the interior of the state?

A. No sir, I cannot say that it will.

Q. 85. Are you prepared to say that it will not have the effect of giving them an advantage?

A. Yes sir, I think I can say it will not. You know these rates which are promulgated by the Railroad Commission are not as low as asked for by the Standard Cotton Seed Oil Company in their application. They ask for the adoption of the Mississippi rate, which I understand is twelve cents maximum and the Commission would not make that rate, but it made a maximum rate of fifteen cents. The Standard Cotton Seed Oil Company in its application asked for the adoption of the Mississippi mileage tariff.

Q. 86. Do you believe that if the tariff of rates as proposed by the Commission is put into effect it would result in driving the volume of seed from the local mills in the interior to New Orleans and Gretna so as to destroy the local mills?

A. No sir, I cannot say it would do so. It would send more seed to New Orleans than comes here now; there is no question about that.

Q. 87. Would it result in the destruction of the interior mills?

A. I do not see how it would.

Q. 88. Would the Order, if put into effect, enable the New Orleans and Gretna mills to compete with the local mills in that seed territory?

A. To the best of my knowledge it would very nearly equalize the matter so that it would be simply a question with the planter or seller whether he would sell to New Orleans or to the interior mills. As a matter of fact, you know, if the New Orleans mills go into that territory to buy seed they have got to pay as much as the interior mills, or else they won't get it. Of course, they won't get it at any less price than the interior mills are paying.

Q. 89. What would be the effect so far as the producer of cotton seed is concerned if you were enabled to compete with the local mills



in that territory that you do not go into now; would the producer be benefitted?

A. Under the natural laws of competition it looks to me like the producer would be benefitted.

Q. 90. In what way, by getting higher prices for his seed?

A. Yes sir.

306 Cross-examination.

By Judge FREEMAN:

X Q. 1. What is the name of your mill in New Orleans?

A. The Delta.

X Q. 2. When was it organized?

A. I do not recollect now, I did not organize it; I should think about ten years ago. Let us see, this is 1907; about eleven years ago.

X Q. 3. How long did it operate before it went into the hands of a receiver?

A. About five years.

X Q. 4. How long has it been in the hands of a receiver?

A. Three years.

X Q. 5. Did it go into the hands of a receiver on account of debts incurred in its construction or operation?

A. Both.

X Q. 6. What was it capitalized for originally?

A. I do not know that I can say; I did not organize the mill.

X Q. 7. It was not paid for?

A. No sir.

X Q. 8. And part of the debts that forced it into the hands of a receiver were debts incurred in construction?

A. Yes sir.

X Q. 9. Do you know of any mill in New Orleans that has gone into the hands of a receiver, or gone out of business during the same period of time that yours has gone out of business?

A. No sir, but the other mills—I would like to make a statement in connection with that. The other mills had attached to them different kinds of plants—lard and fertilizer plants. The Delta Mill was simply a cotton seed mill and its immediate products.

X Q. 10. Have all the other mills connected with them a fertilizer or some other ancillary plant in New Orleans?

A. Yes sir.

X Q. 11. All of them?

A. The Lawler-Fornaris Mill, which was sold a few days ago, they had sold to—they sold it a few days ago—had nothing connected with it except an oil refining plant, but all the others have fertilizer or soap plants; the others have fertilizer plants and lard plants and make soap—they utilize everything.

X Q. 12. Now I understand you to testify that one of the principal causes of your mill going into the hands of a receiver was  
307 that you could not obtain seed from the territory along the Texas and Pacific railroad from which you formerly obtained seed, and that one of the reasons why you could not obtain seed was

the fact that the interior mills had been constructed in that territory, and that they consumed the seed that you formerly obtained?

A. To a great extent, yes sir; that has been the case more particularly for the last five or six years.

X Q. 13. In other words, your mill was located at such a great distance from the seed-producing territory that you could not compete in the purchase of seed with mills located in that immediate territory?

A. That is one of the reasons, yes sir.

X Q. 14. Now I understand you to say that that condition of affairs to a large extent will be remedied if the proposed rates of the Railroad Commission are made effective?

A. If the proposed rates on seed.

X Q. 15. Yes, the proposed rates on seed?

A. Yes sir.

X Q. 16. It will enable you to go into this old territory and buy seed in competition with the local mills located in that immediate territory?

A. It is figured by the various mills here, who have all figured on this, that that rate of the Commission will allow them to go into this territory and buy seed. They will have to pay the same price, you understand, and probably more, too; I do not know whether they could buy them at the same price, Mr. Freeman, as in the last six or seven years there have been quite a number of small mills erected at Colfax, St. Joseph, Torras, Mansfield and Grand Ecore; a good deal of that seed used to go to New Orleans; a good deal used to come by river.

X Q. 17. Here is what I want to know, what I want you to explain; you claim now under the proposed rates you could go into that territory and buy seed?

A. Yes sir.

X Q. 18. Now how do you explain the fact that you could do so when the Commission's proposed rates also reduce the rate from short distance points to the interior mills in the same proportion they reduce the long distance points to New Orleans?

A. I do not know that they reduce that.

X Q. 19. Yes, they do?

A. Within 50 miles of here the rates run from three to six cents per 100 pounds or from sixty cents to \$1.20 per ton.

308 X Q. 20. I am only speaking of the tariff.

A. I don't know anything about the present tariff.

X Q. 21. But you have testified that about the average haul is 50 miles?

A. I stated that is what I heard at the Progressive Union Hall meeting of the Commission. I stated that at the time I heard that testimony given there that the average was about \$1 per ton.

X Q. 22. If you have to pay the same prices for seed in the territory of the local mills and they can get their seed within a distance of within 50 miles at about one-half of your freight rate, I mean the New Orleans freight rate, how is it then, you will be on a parity with

those mills by the Commission's proposed tariff. What advantage have you now that they do not possess that you get by virtue of this tariff?

A. After they make this product, the oil and cake, they have to put it on the market; that market mainly in New Orleans.

X Q. 23. In other words, you have the advantage of not having to pay any freight rate on the manufactured product from New Orleans?

A. We are willing to pay the increased freight rate on cotton seed.

X Q. 24. The question I asked was if you did not have the advantage of being able to ship the manufactured product out without paying any freight rate at all by manufacturing it at New Orleans.

A. The interior mills when they ship their freight, the product of their mills, usually ship to a terminal where there is no cost of handling, while the New Orleans mill has to have that stuff transferred, with the exception of the Union Oil Mill and the Southern Cotton Oil Mill. Where ships can come alongside of their wharves, the other mills have to put their stuff to the ship's side.

X Q. 25. Does not the interior mill have to pay the freight charge to get its manufactured product here, and the handling charge after it gets here?

A. The handling charge, I do not know exactly what it is; Mr. Braggins can better state what that is than I can.

X Q. 26. Does your cost of handling the stuff in New Orleans exceed the rate of freight that the interior mill pays to get its product here?

A. You take the mill that I operate; it costs about 85 cents a ton to get the seed into the mill and get the product out of the ship's side at the railroad, if it comes here by rail. The switching charge 309 by the Texas and Pacific Railway Company to my mill is \$2 per car.

X Q. 27. Let me ask you this question; do you consider this handling charge at New Orleans an advantage or a physical disability that you are laboring under?

A. A physical disability.

X Q. 28. If it is a physical disability, do you expect the interior mills to remove it, or do you expect the railroad company to remove it?

A. Our understanding—

X Q. 29. Just answer that question, one way or the other?

A. I will answer my own way; I don't want to answer it and leave a wrong impression; let me answer it my own way, and then if that is not correct, you can correct me. The rate of 15 cents—we take a maximum rate of 15 cents—that makes the seed cost the New Orleans mills 10 cents per 100 pounds more than the average rate in the interior mills. Now, then, you may say that is offset by the interior mill having to pay the freight rate on product to destination or to a terminal—understand I am not in the railroad business. I understand that the only charge there for a certain number of days' demurrage is unloading.

X Q. 30. You say you understand——

A. I do not know the figures; I know there is a charge.

X Q. 31. You mean a demurrage charge?

A. No, sir; I mean the unloading of the cars.

X Q. 32. Don't you add the freight rate to the charge for unloading the cars out?

A. Yes, we add what it costs; I don't know what it is, it is a small charge.

X Q. 33. The interior mill pays that cost?

A. Yes, sir; I suppose that would be 8 or 10 cents a ton; I do not know exactly what it is.

X Q. 34. Are you prepared to testify that under the commission's proposed rates, the New Orleans mills, in their commercial way of doing business, will so adjust the movement of seed as to equally divide it with the interior mills, so that the interior mills can operate and the New Orleans mills can also operate?

A. Yes, sir; but you cannot make an equal division of the seed, no matter what the conditions are, because there is a great deal of seed that is near-by the interior mills that the New Orleans mills cannot get, but it will give the New Orleans mills an increased

310 proportion of seed; as it is now—I understand the position now as to statistics show the falling off has been very great and in my opinion it is on account of the increase of the interior mills, and they are drawing the seed on account of this low average rate of freight into their mills, drawing the seed from the interior that New Orleans could buy in at the rates proposed by the commission, although the rates proposed by the commission are higher than the Standard Cotton Seed Oil Company asked for.

X Q. 35. Those interior mills on account of having to haul their seed a shorter distance get a less rate?

A. Yes, sir.

X Q. 36. And you want to meet that disadvantage by taking advantage of the commission's proposed reduction of the long distance rate to New Orleans?

A. The commission's rates would——

X Q. 37. That is the way you expect——

A. As I figure that the commission's rate would, while it reduces it in some cases and increases the original rate in others—for instance, you take New Roads. There is a mill right at New Roads; now we used to pay \$1.50 a ton from New Roads here; the Railroad Commission's proposed rate is \$1.90 a ton, or  $2\frac{1}{2}$  cents per 100 pounds. Now the New Orleans mills concede that. As I understand them, they say that while that would probably prevent them from getting much seed from that immediate territory, it would enable them to get some seed they cannot get at  $15\frac{1}{2}$  cents.

X Q. 38. The New Roads rate you are talking about at \$1.50 was in effect there before the New Roads mill was built?

A. The rate was only changed since the New Roads mill was built; because the rate was changed, as I understand it, at the instance of Mr. Fitzhugh, the manager of that mill.

X Q. 39. The rate is \$3?

A. \$3 or \$3.10.

X Q. 40. The commission's rate is \$1.90?

A. Yes, sir.

X Q. 41. Then the commission's rate is not higher than the present railroad rate?

A. \$1.90?

X Q. 42. Yes?

A. The railroad's rate is \$3.10.

X Q. 43. You say that the commission's rate increases the railroad's rate?

A. Over the original \$1.50 rate. Now we used to get a rate of \$1.25 from Port Allen and the commission's rate is \$1.70.

X Q. 44. Now, under the old rates, I understand you to  
311 testify, you will be placed practically in the same situation by the commission's proposed rate, you can get seed within 40 miles of Shreveport?

A. I doubt it, although the rate would be \$3 a ton from that territory as against what I understand to be \$3.50, but Mr. Braggins says that is only a special rate.

X Q. 45. I refer to your former testimony; you said that formerly you could buy seed within 40 miles of Shreveport, and had bought it to ship to your mill at New Orleans?

A. Yes, sir; but, Mr. Freeman, if you recollect, I also spoke about the building of the Mansfield mill?

X Q. 46. I am getting to that, but since the construction of the local or interior mills, say at Mansfield and at other points on the Texas and Pacific, you have been unable to get into that territory?

A. Yes, sir.

X Q. 47. I further understood you to testify also that under the commission's proposed tariff you expect to go into that territory?

A. Get some seed out of it; yes, sir.

X Q. 48. In other words, you expect to be able to haul seed for a distance of 220 miles—

A. It is more than that, 290 miles.

X Q. 49. About 280 miles. You expect to be able to get into that territory and buy seed, 280 miles from New Orleans and compete with the interior mills for the purpose of that seed?

A. Buy some seed, not any great quantities.

X Q. 50. Do you think, as a transportation problem it is to the interest of the railroad companies to build up these interior mills along the line of their roads?

A. That is what they claim; I am not a railroad man.

X Q. 51. I understood you to testify a while ago that a large part of the seed, especially that which is ginned the first thirty days, should be promptly removed?

A. It should be; yes, sir.

X Q. 52. On account of the fact that it is probably greener than it is later on, and it will heat?

A. It will be to the interest of everybody, the shipper and the mill, and everybody else, to get it moved as early as possible.



X Q. 53. Doesn't it facilitate its movement to have a local mill, situated in the local territory where the seed are located?

A. Well, if transportation could be furnished to bring in part of that seed here, why it would amount to the same as if it were hauled to a nearer mill; that is a railroad transportation proposition; I cannot answer that.

X Q. 54. Wouldn't it facilitate the movement of seed to have a local mill in the interior where the seed are raised?

A. It would be better for the mill, it would get to that mill quicker than anywhere else.

X Q. 55. How far can your wagons haul seed?

A. They do not have to wagon haul it now beyond ten miles, I do not think, on account of the location of the interior mills.

X Q. 56. Then if you have interior mills located anywhere within 10 miles of the seed the farmer could wagon haul his seed to the interior mills?

A. I can only give you that Seips Switch case, where the rate was made 50 cents to keep them from hauling it; that was the reason why the rate was made.

X Q. 57. Now, captain, wasn't the purpose of the commission's proposed tariff to give the New Orleans mills an absolute monopoly in the matter of the cotton seed business of Louisiana?

A. That tariff does not show it.

Judge GUION: Purpose of whom?

Judge FREEMAN: For the benefit of the New Orleans mills?

WITNESS: Purpose of whom? I do not know who you mean?

X Q. 58. I mean the Louisiana Railroad Commission's purpose of combining with the New Orleans mills; that is what I mean, the combination of the two?

Judge GUION: That will compel me to bring the mills here which I hoped not to be compelled to do.

A. I do not know of any collusion between them——

X Q. 59. I do not call it collusion.

A. —from the mere fact that the commission did not accede to the request of the New Orleans mills; they did not give them what they asked for.

X Q. 60. Isn't the effect of the commission's proposed tariff to give the New Orleans mills an advantage as against the interior mills?

A. I cannot say that it does, according to that tariff.

X Q. 61. Is not the effect of the commission's proposed tariff to equalize the New Orleans mills with the advantage possessed by the interior mills on account of their nearness to the producing territory?

A. I do not think that the commission's rate as promulgated here does exactly equalize it, but the New Orleans mills have got to take the chances.

X Q. 62. I say, was not that the purpose of that tariff?

A. The purpose of the tariff, as I understand the purpose of the application of the Standard Cotton Seed Oil Company, was to equal-

ize, and they claimed that they should have a maximum rate of 12 cents and the commission did not think so and made the maximum rate 15 cents. The commission figured differently from what the New Orleans mills did.

X Q. 63. Did I understand you to testify that the railroad companies can make more money by hauling seed 250 miles under the 15 cent rate than they do on a maximum of a 50 mile haul to the interior mills and hauling the product out?

A. I cannot say how the railroads figure that. I know how the steamboats figure it. We would rather haul it direct and be done with it than to haul it into a mill and haul the product out.

X Q. 64. You testified a few moments ago that the railroad companies would make more by hauling the seed 250 miles on a maximum of 15 cents than they would by hauling seed in a short distance and hauling the product out.

A. That would be my opinion as a water transportation man, but my friend, Mr. Braggins, and all the others, have a different theory on that.

X Q. 65. Let us see how that would figure; say we haul 2000 pounds of seed 50 miles?

A. That is \$1.

X Q. 66. I do not care what you fix the rate at; just take it and leave the question of rate out?

A. We would haul a carload of seed, say 30,000 pounds, 50 miles——

X Q. 67. Now, according to your testimony, the manufactured product of that seed, oil and cake, will exceed 50% of the original tonnage in?

A. Yes, sir. You are probably aware of the fact that the testimony taken before the commission, both here and at Baton Rouge, I think Mr. Masters, who is dead, testified to the fact that a haul in and a haul out was considered as 1000 pounds of product out  
314 of a ton of seed; that is, oil and cake; but it runs over that, they ship about 1100 pounds. In fact, Mr. Hamilton testified

in Baton Rouge that he figured it 1100 pounds outside of the hulls.

X Q. 68. This 1100 pounds of product, oil and cake, can be loaded to the full capacity of a car, 60,000 pounds?

A. I suppose so.

X Q. 69. Then in hauling the oil and cake out you can haul as much in one car as you can haul of cotton seed in two cars?

A. A railroad man would have to figure that out.

X Q. 70. That is not a matter of railway figuring, simply——

A. I do not know whether you can put 60,000 pounds in a 30,000 pounds car, or not. I know as a steamboat man, that cake and oil are heavy.

X Q. 71. In other words, if you have got a 60,000 pounds capacity car you can load 60,000 pounds of oil in there?

A. Yes, sir; oil is shipped entirely in tank cars, I know, to their full capacity.

X Q. 72. Now then, according to your statement, you want us to haul 30,000 pounds of cotton seed 250 miles when we can haul

twice the amount of product with one-half the equipment, the same distance, under the commission's tariff, at a higher rate; would you consider that profitable?

A. You don't get a higher rate for it; I may be wrong——

X Q. 73. I am talking about the product rate?

A. I say that you figure you haul the seed in and haul the product out; at the Railroad Commission's figures here you make a total haul. You haul the seed in and haul the product out and you do not get as much for the whole haul as 15 cents per 100 pounds.

X Q. 74. Where we haul in two cars of seed one car will carry the product out?

A. If that is the way of figuring you have.

X Q. 75. Let me put this proposition to you. After we bring cars here, 250 miles to New Orleans, loaded with seed, those cars have to be put back into that producing territory again if we expect to handle seed; is not that a fact?

A. Either those cars or you have to produce other cars.

X Q. 76. Would you consider it as profitable to haul empty cars back into the producing territory, 250 miles, as it would be to haul loaded cars back and forth for a distance of 50 miles?

A. I can only answer, being a water transportation man, that we have sent out boats cotton empty to bring back loads of any-  
315 thing, cotton seed or anything else.

X Q. 77. Would it be as expensive to send your boat 25 miles up the river and back to New Orleans to get your load as to send her to Shreveport and back to get loads?

A. I do not exactly understand that question?

X Q. 78. I will put it again, would it cost you less to send your boat to New Orleans from a point up the river 50 miles in order to get a load and bring it to New Orleans than it would to send your boat to Shreveport in order to get a load and bring it to New Orleans?

A. The Shreveport proposition would cost the most, but the revenue would be greater; the revenue from Shreveport would be greater than the revenue from the 50 miles point. For instance, we handle business on the coast at 10 cents per 100; we would get as high as 40 cents and 50 cents to Shreveport. By water transportation the further we go up the river the higher the rate.

X Q. 79. If you did not have to send your boat up to Shreveport to get loads your revenue would be still greater than to send it here?

A. I have not sent one to Shreveport in so long a time that I cannot answer that question; the railroads have shut us out. I would like you to stop that too.

X Q. 80. What were your rates on cotton seed from Shreveport to New Orleans?

A. 15 cents per 100 pounds. By water you mean?

X Q. 81. Yes?

A. 15 cents per 100. We have a rate from Shreveport all the way down; we have no mileage rate; the boat leaving Shreveport charges the same rate on cotton seed all the way down.

X Q. 82. What would be your rate from Port Allen?

A. The rate from Port Allen, I think, is \$1.75; we do not handle any from there.

X Q. 83. But you have a tariff?

A. 10 cents per 100; that is the tariff, \$2 a ton, but we do not handle it.

X Q. 84. The railway rate from that point is \$1.25.

A. From where?

X Q. 85. From Port Allen south?

A. Under this order of the commission it would be \$1.70.

X Q. 86. We are not talking about the Railroad Commission's proposed rate, but the railroad rate as it now exists?

A. Is how much?

316 X Q. 87. \$1.25?

A. Our rate is 10 cents per 100; we do not get any business from there at all. I am under the impression that Port Allen seed go over to the Baton Rouge mill.

X Q. 88. Have you any rate on your line less than \$2 per ton, on cotton seed?

A. No, sir. Let me explain to you about the steamboats handling this stuff; handling cotton seed by rail, as a rule, I think it is customary for the shippers to load the cotton seed and the consignee to unload it. In the steamboat business we have to load and unload; now we cannot handle it at less than 10 cents per 100 and do that.

X Q. 89. You don't have to pay any taxes on your right of way, on your track, to move it, do you?

A. I don't know, we pay a whole lot of taxes.

X Q. 90. Not on your right of way and track?

A. That belongs to the United States Government; we would like to pay taxes on it if we were allowed to handle it to suit ourselves.

X Q. 91. It is also a well recognized traffic regulation that water transportation should be much lower than railroad transportation, is it not?

A. Not as a rule; no, sir.

X Q. 92. Then water rates really ought not to reduce rail rates?

Objection—Judge GUION: Objected to *no* the ground that the witness is asked concerning an expression of opinion, and not to testify as to facts, and it is not evidence, being a mere matter of opinion, and not evidence of any fact material to this case.

A. Well, that is a rather difficult question to answer, because we never have been forced to accept rail rates wherever we find them; if we find we cannot handle at those figures we have asked for higher rates, and the answer to the commission has been that the—

By Judge GUION: In other words, you are regulated by the Railroad Commission in this State as well as the railroads are?

A. Yes, sir; the water rates are submitted to the Railroad Commission and approved by them before being made effective.

By Judge FREEMAN:

X Q. 93. Have you been before the Railroad Commission of Louisiana at different times within the last two or three  
317 years and asked them for an increase in your rates?

A. Yes, sir.

X Q. 94. An increase in your rates over the railroad rates?

A. In some instances. I would like to explain that—

X Q. 95. Did the commission grant your requests—

A. I think—

X Q. 96. Did the commission grant those requests?

A. They did, but I want to explain.

X Q. 97. Go ahead and explain.

A. In October, three years ago, the rates of freight had been so reduced by the rail lines, and the competition of the steamboats themselves, that the business had gotten to that point when it was either that the steamboats must quit or be allowed better rates of freight. I represented various steamboats out of the port and went to the commission and stated these facts to them and produced the evidence of increased expenses of the steamboat property and asked for an advance of one-third over the prevailing merchandise rates on sugar and molasses, and 25 cents a bale on cotton, which was granted. Those rates in some instances were higher than the rail rates, but because the water transportation gives the facility of quick handling the rates are paid without any hesitation on the part of the shippers, because it was shown it was necessary to do this to maintain the water transportation.

X Q. 98. Have the rates on sugar and molasses on the Texas and Pacific been changed during the last ten years, or prior to the time you made this application for the increase of your water rate?

A. I do not know; I know that we found the rate of  $7\frac{1}{2}$  cents too little and the commission allowed us to raise that to 10 cents. Understand, Mr. Freeman, that up to three years ago this coming fall I was connected only with the Red River boats; it is only three years this coming fall that I became connected with the entire list of steamboats. I do not know what rates of freight prevail on the coast at all. We never did any business on the coast.

X Q. 99. I understand you to say that the Louisiana Railway and Navigation Company had a rate on cotton seed of 15 cents?

A. That is the rate.

X Q. 100. They have no other mileage scale, or no other rates?

318 A. No, sir; that is all I know. I know of no lower rate than that. I have not gotten any seed from them except above Alexandria, which would be in a territory over 190 miles.

X Q. 101. Say opposite Baton Rouge, or just below there, Burnside, or along there, about 80 or 90 miles, their rate then, I understand, would be 15 cents?

A. I do not know that. I only know their rate is 15 cents on the Red River branch.

X Q. 102. Is the rate on the Texas and Pacific opposite there,



along Plaquemine, do you know what that is; I mean the present rate?

A. No, I know what Mr. Marshall told me, that he would adopt the same rates on his road that was adopted on the other roads.

X Q. 103. Take a point 100 miles; for instance, above Baton Rouge; that would be 15 cents?

A. I cannot tell anything about the Louisiana Railway and Navigation Company's rates, except from the time they leave Shreveport until they come down to Water Valley; what their rate is from Angola here I do not know. I know what it is by water. It is 10 cents by river.

Redirect examination.

By Judge GUION:

R. D. Q. 1. You were asked a moment ago by Judge Freeman certain questions concerning the long haul to New Orleans on cotton seed, and of the return from New Orleans to the producing territory of empty cars; you were questioned along certain lines as to whether or not it would be a better revenue producer to the road to have those cars brought to New Orleans or carried to local mills and there unload the seed and bring it to New Orleans as product, and he asked you to assume that those cars were returned empty; well, as a matter of fact, cars coming to New Orleans with loads of cotton seed from the producing territory, return with loads in them, do they not?

A. The oil mills themselves ship a great deal of product back by the line of railroad in the way of lard compound, fertilizer and soap. The Columbia Mill makes soap which they ship.

R. D. Q. 2. Then it is not a fact that the cars come into New Orleans loaded with seed and return empty to the producing territory?

A. Well, some cars may return empty, but other cars are loaded and shipped with this lard compound from the Southern  
319 Cotton Oil Mill, with lard compound and fertilizer from the Union Oil Mill at Gretna; and I know that the Columbia Mill ships a great deal of soap back over the road, all of which is the product of cotton seed. In making fertilizers a large amount of cotton seed meal is used.

R. D. Q. 3. Where does that come from?

A. It is manufactured from the seed that is brought here by the railways.

R. D. Q. 4. Is there any crude oil made at the local mills?

A. Yes, sir; there is a large amount of crude oil that comes here by rail from the interior mills.

R. D. Q. 5. And worked up into lard compound?

A. Yes, sir; and refined and shipped abroad.

R. D. Q. 6. Any shipped back over the Texas and Pacific?

A. Only in lard compound.

R. D. Q. 7. That is what I say?

A. Yes, sir; lard compound and fertilizer.

R. D. Q. 8. Well, now, during the time that your mill was in operation, did you make any fertilizer?

A. No, we made nothing but oil and cake; oil, cake and linters.

R. D. Q. 9. What became of the oil you made from the seed you crushed?

A. It was mainly sold to the mills here that had refineries.

R. D. Q. 10. They refined it into what?

A. Into refined oil with which they, in a great measure, made soap and lard compound.

R. D. Q. 11. Any ever sold to the mills on the other side at Gretna?

A. Yes, sir; the product of my mill was sold mainly to the Union and to the Southern.

R. D. Q. 12. You made no fertilizer?

A. No, sir.

R. D. Q. 13. You made cake?

A. I made cake, oil and linters.

R. D. Q. 14. Your cake went out as export?

A. Yes, sir.

R. D. Q. 15. And your oil went to these factories on the other side of the river?

A. Yes, sir.

R. D. Q. 16. And was worked up into lard compound?

A. Lard compound, refined oil and soap stock.

R. D. Q. 17. Was that the case, not only with your mill, but to the other oil mills in New Orleans, that they bought the  
320 crude oil from these local mills and worked it up into lard compound and other products?

A. Those mills that had refineries, and lard compound and soap factories, bought a great deal of oil from the interior that comes in by rail; that all comes by rail for the reason that it is shipped in tank cars.

R. D. Q. 18. I am not speaking of what comes in from the interior mills, but mills located here in New Orleans?

A. Yes, sir; sold to mills and manufactured.

R. D. Q. 19. In Gretna?

A. In Gretna, I believe, from both in Gretna and the Columbia Mill on this side of the river frequently buys.

R. D. Q. 20. Now, you stated just now about the mill of the Lawler-Fornaris Company—

A. Yes, sir; it is called the New Orleans Cotton Seed Oil and Manufacturing Company.

R. D. Q. 21. Which was sold, you say, recently?

A. Yes, sir; a few days ago.

R. D. Q. 22. Sold under what kind of procedure?

A. They made a straightout sale of it to a company organized and called the Orleans Cotton Oil Company.

R. D. Q. 23. What was the Lawler-Fornaris Company called?

A. The New Orleans Cotton Oil Manufacturing Company.

R. D. Q. 24. What was their business; they simply crushed seed?

A. Yes, sir; and also refined oil.

- R. D. Q. 25. What do they propose to do now, the new company?
- A. The same thing, I presume; it has been sold to people who own mills on the Texas and Pacific railroad.
- R. D. Q. 26. In the country?
- A. Yes, sir; to be operated here.
- R. D. Q. 27. Not by local people?
- A. No, sir; by the oil mill people.
- R. D. Q. 28. I say, the mill of the Lawler-Fornaris Company has been sold to people who own local mills in the country?
- A. Yes, sir.
- R. D. Q. 29. Interior mills?
- A. Yes, sir. Mr. Hamilton, of Baton Rouge, is one of them; the Baton Rouge Mill and the Boyce Mill—they are the same people who own stock in the country mills.
- R. D. Q. 30. Do you know whether that mill—if you don't know don't state it—was a paying investment prior to its being sold?
- A. I do not think it was, else they would not have sold it.
- R. D. Q. 31. That mill and your mill were the only two, as I understand it, that confined themselves to crushing seed and making crude oil?
- A. The Lawler Mill refined oil; they also had a refinery attached to their mill, but they don't have any manufactory for lard compound or anything of that kind; they refined their oil and sold the refined oil. The Fornaris people sold their refined oil to people across the river.
- R. D. Q. 32. All the rest of these mills in New Orleans, I understood you to say, work up their cake and oil either into lard compound or into fertilizers?
- A. They work up their meal, and, you know, meal is made from cake; you have to make the cake first, then grind it to make the meal.
- R. D. Q. 33. They use a great deal of that meal to make fertilizer, with other compound?
- A. Yes, sir; a great deal, and they use a great deal of oil in making lard compound and soap.
- R. D. Q. 34. Does any of that fertilizer made from this cake go back into the fields of Louisiana?
- A. Yes, sir.
- R. D. Q. 35. Any of it shipped out by export for fertilizer?
- A. No, sir; there is cake shipped out; cake and meal is shipped by export, but not fertilizer; you know meal is a fertilizer in itself; the sugar planters use a great deal of straight meal as fertilizer.

Recross-examination.

By Judge FREEMAN:

R. X Q. 1. I would like to ask you about this return of empty cars. You do not mean to say that all cars that would be shipped into here with seed would be returned to the local territory loaded, do you?

A. I do not know what territory they go out on. I can tell you this; within the last few years the actual product shipped out has been more than the seed brought in by the railroads.

R. X Q. 2. I mean shipped to the point where the car originated?

A. No, sir; the seed has been shipped from some way-station and the lard compound and soap would be shipped to other places, like Shreveport or Alexandria, interior points, for sale; the fertilizer would be shipped back to plantations, but not to the same plantations that the seed came from.

322 HENRY B. GOLDSMITH, witness sworn and examined on behalf of defendants, testified as follows:

'Direct examination.

By Judge GUION:

Q. 1. What is your name?

A. Henry B. Goldsmith.

Q. 2. Where do you reside?

A. On Octavia street, 1671, New Orleans.

Q. 3. What is your business?

A. I am manager of the N. K. Fairbanks Company.

Q. 4. What is their business?

A. Manufacturer of lard compound, and cottolene. We do not make soap here.

Q. 5. You make lard compound here?

A. Yes, sir.

Q. 6. Where is their factory?

A. At Gretna.

Q. 7. Do you use cotton seed oil in the manufacture of lard compound?

A. Yes, sir.

Q. 8. Could you state what the amount of lard compound that company has shipped out from your factory over the Texas and Pacific railroad during the past two years?

A. Well, according to the records of our out-freight over the Texas and Pacific on which we paid freight showing it must have been shipped, amounts to 12,447,952 pounds of lard compound. Those, of course, are gross weights including the weight of package, but shipped as lard compound.

Q. 9. From what time down to what time?

A. From May 1st, 1905, to April 30th, 1907.

Q. 10. The shipments that you say were made in lard compound over that road during that period of two years, do they correspond approximately with the shipments made during prior years?

A. Well, I should say there was some increase. I cannot tell that absolutely, but I think so.

Q. 11. Is that increase—

A. Some increase in the business.

Q. 12. I say, is that increase large or small?

A. It would not be a great deal. I could not even give an idea of it until I looked into it, I did not make any comparison of that character at all.

Q. 13. This statement that you have just testified to is  
323 one that you swear to from an examination of the records of your office?

A. Yes, sir; it was compiled by the clerks there and I suppose it accurate. I expect it should be because that is their business. I did not verify it myself personally. It has been verified by the clerks whose business it is to do it.

Q. 14. They were directed to do it by you?

A. Yes, sir.

Q. 15. Mr. Goldsmith, can you state what amount of crude oil was used in the making of that number of pounds of lard compound?

A. No, sir; I could not, only refined.

Q. 16. You could state the number of gallons of refined oil?

A. Yes, sir; approximately. The difficulty in that is the variation of formulas which will run in summer and winter about two and three per cent only, and in estimating the amount of oil used I used the average formula the year round. It would be 10,263,040 pounds, of course you can get the gallons by dividing that amount by  $7\frac{1}{2}$ .

Q. 17. How many pounds in a gallon?

A. About  $7\frac{1}{2}$ . That is taken as a factor in figuring.

Q. 18. Are you able to state how many gallons or pounds of crude oil are represented by that number of pounds of refined?

A. No, sir; because I do not really know the refining loss. I do not have anything to do with the refinery at all.

Q. 19. Do you know what this refined oil is made from out of which you make this lard compound?

A. It is made from crude cotton seed oil.

Q. 20. Do you know where that crude cotton seed oil was obtained?

A. No, sir. We do not buy oil except in the refined state.

Q. 21. Do you know where the refined oil was obtained?

A. Oh, yes, from the Union Oil Company; they furnish us with oil.

Q. 22. Where is their refinery located?

A. That is at Gretna also.

Q. 23. Is that company engaged in crushing cotton seed as well as in refining oil?

A. Yes, sir.

Q. 24. I show you you a statement which has been put in my hands. What is that statement?

(Counsel hands witness statement referred to.)

324 A. It represents the total number of pounds handled over the Texas and Pacific railroad in switching from the Gretna plant to New Orleans.

Q. 25. Switching what?

A. Lard compound and cottolene, both are included in that.



Q. 26. During what period of time?

A. That is from May 1st, 1905, to April 30th, 1907.

Q. 27. You have nothing showing the amount of money paid for that switching?

A. No, sir. I could compile it the same way as this is compiled. I could have done it if I had known you wanted that statement.

Q. 28. Have you anything showing the number of pounds or gallons of refined oil contained in that lard compound that was switched over?

A. Yes, sir.

Q. 29. What is the number?

A. 24,021,593 pounds.

Q. 30. Of refined oil?

A. Yes, sir, of refined oil in lard compound and cottolene.

Q. 31. Now, that refined oil represented in that lard compound was obtained from what plant?

A. From the Union Oil Company.

Q. 32. Do you know where the Union Oil Company gets its crude oil?

A. No, sir; I do not.

Q. 33. Do you know whether it buys it in the State of Louisiana.

A. Oh, yes; they have mills in Louisiana, I think they ship crude oil from several points.

Q. 34. Do you know what it does with its crude oil manufactured from the crushing of seed at its mill?

A. I think it ships to the refinery, I do not know about that.

Q. 35. Is this an affiliated plant with the Union Oil Company?

A. Well, it belongs to the American Cotton Oil Company, they are affiliated companies. It has nothing to do with the Union Oil Company directly.

Q. 36. That number of pounds of lard compound represented by the statement which you are examining now and which you have before you, is lard compound switched from your factory over to the east bank of the Mississippi River by means of the Texas and Pacific Railroad?

A. Yes, sir.

Q. 37. And the other lard compound concerning which 325 you have testified, was shipped directly from the west bank of the Mississippi River by means of the Texas and Pacific road?

A. Yes, sir; that would represent the shipments gone out on that line.

Q. 38. And the switched part was brought over to roads on the east bank. Is that correct?

A. Yes, sir. It was brought over in carloads and distributed on this side.

Q. 39. Do you know, or not, what number of tons would be represented by the refined oil concerning which you have testified?

A. No, sir.

Q. 40. Does the Union Oil Company work up all of its crude oil, obtained from the crushing of cotton seed, into refined oil.

A. That I cannot say. They may sell crude oil. I do not know. They possible [possibly] might. Most of it, I should think, would be refined right away.

Q. 41. They have a refinery attached to their plant?

A. Yes, sir. A large one.

Q. 42. And you say that you buy your refined oil from the Union Oil Company?

A. Yes, sir; the American Cotton Oil Company supplies us from that plant.

Q. 43. Do they get refined oil elsewhere?

A. The Union—

Q. 44. Than from the Union.

A. We do not; no, sir.

Q. 45. Your entire supply of refined oil is obtained from the Union Oil Company?

A. Yes, sir. There may have been one or two cases where we were compelled to get a tank or two, but I know of only one case in my life.

Q. 46. That is an exception?

A. Yes, sir.

Cross-examination.

By Judge FREEMAN:

X Q. 1. Do you buy your lard compound from the Union Oil Company?

A. No, sir; we buy the oil and make the compound ourselves.

X Q. 2. You buy the oil?

326 A. Yes, sir.

X Q. 3. What was the profit on your books for the year ending January 1st, 1904, net profit?

A. Those things I know absolutely nothing about.

X Q. 4. Have you kept your books so you can give the information?

A. No, sir; that would have to come from Chicago.

X Q. 5. This is a branch office?

A. Yes, sir; sales office, manufacturing office.

X Q. 6. I understood you to say you did not know what the proportion of crude oil was the Union Oil Company purchased in Louisiana?

A. No, sir; nothing at all.

X Q. 7. Do you know if they purchase oil from other parts of the country outside of Louisiana?

A. Yes, sir, I think they do; I only know that from hearsay, they say they had so many tanks of oil coming in which we would get, some of which came in from different lines.

X Q. 8. This switching charge which you have mentioned there, covers what period of time?

A. It covers from May, 1905, to April 30th, 1907.

X Q. 9. That has heretofore included switching your cars across

the river and practically unloading and distributing your stuff in our stations?

A. Yes, sir.

X Q. 10. You have no warehouse in which you unload that on this side at all?

A. No, sir; it is distributed from the T. & P. stations.

X Q. 11. And none of the stuff brought on this side on the switching charge, goes out on the Texas and Pacific again?

A. Yes, sir; quite a little of it does; well, some of it; I can't say quite a little. Well, where we would have to ship in small lots to go out on the Texas and Pacific, we might have to bring it over on this side and distribute it. Some might go on the I. C. and other lines.

X Q. 12. But the bulk of the stuff that goes on the Texas and Pacific goes out on the west side?

A. In carloads lots. I do not know whether they bring it over here, or not, they simply give us a receipt. That is all I know. I suppose it is taken from the other side.

X Q. 13. Have you ever made any calculation upon the freight rate on cotton seed into New Orleans as fixing the price you pay for oil to the Union Oil Company?

A. I never have.

X Q. 14. Is not the principal business of the Union Oil  
327 Company the buying and refining of crude oil, rather than the crushing of seed?

A. I do not think so, I do not know, I know very little about their business.

X Q. 15. Do you know where the interior mills of the Union Oil Company are located?

A. Only simply from hearsay, you might say. I think they have a mill at Torras, one at Vidalia and one at Bunkie and one at Monroe and one at Shreveport. Those are the only mills I have ever heard mentioned.

X Q. 16. Do you know whether they have mills in other states?

A. Yes, sir; I think they have.

X Q. 17. Is it not a fact that the Union Oil Company belongs to the American Cotton Seed Oil Company?

A. That has always been my impression, I always understood so.

X Q. 18. Is it not also your impression that the Fairbanks company belongs to the same concern?

A. Yes, sir.

X Q. 19. They have one traffic manager for both?

A. Yes, sir.

X Q. 20. All operated just as one concern with these ancillary branches around like the Fairbanks?

A. As near as I can recollect I think each company stands on its own individual private basis, but I do not know anything further than that. They are all under one executive head, really.

By Judge GUION:

R. D. Q. 1. The Union Oil mill about which you have testified is in Gretna?

A. Yes, sir.

R. D. Q. 2. Its business is the crushing of seed and the refining of oil?

A. Yes, sir; they have a seed mill, crushing mill we call it, and also the Gretna Refinery.

R. D. Q. 3. Seed mill, you mean they crush seed?

A. Yes sir.

R. D. Q. 4. Make crude oil from seed?

A. Make meal and cake from cotton seed, and crude oil.

R. D. Q. 5. It is not engaged—the Union Oil Company—in making lard compound?

A. No, sir.

Defendants close their case.

328      *Defendants' Exceptions to Master's Report.*

Filed March 7th, 1908.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division. In Equity.

No. 56.

THE TEXAS & PACIFIC RAILWAY COMPANY

vs.

THE RAILROAD COMMISSION OF LOUISIANA.

Exception to Report of Special Master.

And now into court, by their undersigned solicitors, come the defendants, in the above numbered and entitled cause, and except to the findings and report of Solomon Wolf, Esq., Special Master herein, for the reasons and upon the grounds following, to-wit:

1.

Because said report finds that the tariff proposed by the defendant commission is not fair and reasonable, and bases such findings upon the grounds:

First. That said proposed tariff would reduce the income of the complainant, which the Special Master holds does not yield a reasonable return on the investment and is otherwise insufficient to enable the complainant to perform fully and completely the duty which the law imposes upon a public carrier.

Second. It imposes a greater charge for a fifty-mile haul to a mill, outside Gretna and New Orleans, than it does for a hundred-mile haul to the latter towns.

Third. The first charge of three (3) cents per one hundred (100) pounds, in addition to the regular schedule, which mills, outside Gretna and New Orleans, must pay, unless they ship a certain

amount of product—is grossly excessive, when added to the regular rate for distances of five, ten, fifteen miles and other short hauls, as compared with long hauls, since the per cent of increase is far greater on the regular rate for short than for the longer haul.

329 Fourth. That, without any reasons given in the record, the tariff discriminates in favor of the mills in New Orleans and Gretna, by relieving them of the additional charge, which it imposes on all other mills, unless they comply with a more or less onerous obligation.

Fifth. Reasons not specified but said to be contained in the body of the Master's report.

## 2.

Defendants except to said report, with its findings and conclusions, because neither the state of the pleadings nor the claims of the complainant as made in its bill justify the same. Nor would the testimony taken, relied on by the Master and reported of itself justify the finding that the proposed rates would be unfair or unreasonable. And defendants further insist on the specific exceptions following:

(a) Whereas, the Special Master has found that the application of the proposed tariff would reduce the revenues of the complainant to the extent of \$23,775.95 a year, that finding is based entirely upon a theory or conjecture and upon a movement of the cotton seed traffic which excludes the termini of complainant's railway at Gretna and New Orleans, while the testimony (Bradshaw, p. 128, Hauser, 198, and Drown, 277), shows conclusively that the present rates charged by complainant on the long haul to New Orleans and Gretna are prohibitory, and that the proposed reduction would actually increase the earnings of the complainant on cotton seed (Redfield's ans. to X-int. 11) because the movement of seed to New Orleans and Gretna would revive. (Same witness.)

(b) The testimony (Redfield's ans. to X-Int. 10) shows conclusively that, although it is a general principle applied to the making of fair and reasonable rates, that the greater the length of the haul the lower the rate per ton per mile should be, for the obvious reason that the expense of transportation does not increase in proportion to the distance, the complainant's objection to the tariff of the defendants, embodying that principle, is based upon the theory that it has the right to exclude the seaboard mills from the interior seed markets on its line, although it would confessedly derive a greater revenue from the transportation service (Braggins, Redfield, 330 Hamilton and Drown), in order that it may protect the interior mills and get the out-haul on the manufactured product. Whereas, the Special Master's report and findings maintain that insufficient revenue would be derived and justifies a discrimination against the terminal mills.

(c) Whereas, the Master has found that the proposed tariff is a discrimination in favor of New Orleans and Gretna and against the interior mills in respect to the flat charge of 3 cents per 100 lbs. on cotton seed, the said proposed tariff is not attacked upon that ground nor is there any evidence of complaint against the same based on that theory. On the contrary, it appears from the testimony that



the mill patrons of the complainant in the interior of Louisiana are not opposed to the charge in question, and it further appears from the testimony (Hamilton) that, as a matter of fact, the 3¢ charge is not a substantial and extra burden since the interior mills do ship by complainant's railway 50 per cent in weight of their cotton seed in the shape of products therefrom, and complainant's own tariff imposes the same 3¢ charge.

(d) While said report, without any or without sufficient evidence that the effect of the proposed tariff would be to reduce the revenues of the complainant from operation and that its revenues would be an insufficient return upon its investment, the complainant, assailing said tariff, has failed to show the cost or value of the particular service in question.

(e) Whereas, the said report, in essaying to determine the amount of the complainant's investment, upon which it is held the returns are and would be (if the proposed tariff is applied), insufficient, places the same at the face value of the stock and bonds, to-wit: \$93,385,341.32; the figures are based on the alleged cost of all the defendants' railways, main and branch lines, and there is no evidence, as the Master admits, showing the amount of the investment in the State of Louisiana, wherefore, the Special Master was without warrant in concluding that the assumed proportionate investment in the entire railway should be taken as an earning basis for the State of Louisiana.

And, there being no other evidence of value, based on alleged cost, than the figures given for the entire railways, the Master erred in declining to accept the evidence of value furnished by the sworn return of a representative of complainant for the railway in  
331 Louisiana, at \$10,000 per mile for the main line, and \$5,000 per mile for branches.

(f) The testimony taken does not show what amount of money was actually invested in the construction and equipment of the complainant's railway; and the figures given, that is to say, the aggregate of the stock and bonds, are taken on tradition merely as the amount of the investment.

And the Master erred in ignoring the evidence of the complainant's witnesses as to the cost of the line of railway recently built by complainant from Natchitoches to Shreveport when labor and materials were notoriously higher than ever before as furnishing a criterion for the investment in Louisiana. (Testimony of Thorne.)

(g) Since the Special Master was not justified by the evidence or by the law in finding that 4.60% upon the aggregate of the stock and bonds of complainant, based on the whole line of railway, in and out of Louisiana, was an inadequate return for all and was not justified by any testimony in applying that percentage of net earnings only to business in Louisiana; and especially since the testimony conclusively shows that the expense of operation in Texas exceeds by about \$1,000 a mile the expense of operation in Louisiana. The figures being as follows:

(From the testimony of Redfield, quoted on page 11 of the report.)

Texas, gross per mile, \$7,478.50; net.....	\$2,274.57
Louisiana, gross per mile, \$6,466.53; net.....	\$2,230.19

Difference in expense in favor of Louisiana  
over Texas .....\$977.79 per mile

In other words, the expense of operation in Texas is \$5,204.13 per mile and in Louisiana \$4,236.34 per mile, which figures would seem to justify a higher rate in the former state.

The proportion of net to gross earnings in both states being ideal from a railway's point of view.

(Note.—The Master has inadvertently disarranged the figures in pointing off; but that is obvious.)

(Note 2.—The figures quoted are for the year ending June 332 30, 1905. The falling off shown for the year ending June 30, 1906, are, of course, due to the prevalence of quarantine against New Orleans for a considerable part of the year 1905.)

(h) The Special Master has erred in ignoring the testimony of Hauser, Bradshaw and other witnesses for defendant, and uncontradicted, that complainant voluntarily maintained a lower rate to New Orleans for distances of 100 to 135 miles, even lower than the proposed rate, and only took same out at the instance of J. C. Hamilton for the benefit of a local interior oil mill. (Braggins.)

(i) In finding that the rate for the short distances with the 3 cents per mile added makes a rate for 50 miles as high as that for a 100-mile haul to Gretna or New Orleans, the Master has ignored all the evidence respecting the actual movement and that there is no substantial seed supply within 100 miles of New Orleans on complainant's line of road. (Bradshaw, Hauser.)

(j) The said report is manifestly due to the error of the Special Master in point of law that the burden of proof is upon the defendants to maintain the reasonableness of the proposed rates; that there is no presumption that the respondents acted lawfully; whereas, in point of law, it is upon the complainant to establish, by a preponderance of proof, that the proposed rates in Louisiana would be unjust, unfair or unreasonable in themselves, as alleged in the bill of complaint and denied by the answer.

And erred in refusing to apply the legal presumption that the officials, acting under the Constitution and laws, did their duty in the premises. It being submitted by exceptors that the law does raise a presumption in such case without any statutory declaration to that effect.

(k) And defendants except to so much of said report as denies effect to the evidence as to rates in general for similar services elsewhere, and especially to so much of the said report as ignores the proof of substantially lower rates on cotton seed applied by the Louisiana Railway and Navigation Company, a new road running through the undeveloped portion of Louisiana not distant from complainant's lines; because in the absence of more definite criteria, these several rates should be regarded in determining whether or not the commission erred.

333 (l) And defendants except to so much of said report as treats the rates on one or two commodities in the same manner as if the entire schedule of complainant was involved,—especially as it has not been shown by any testimony that the trifling loss in revenue, apprehended by complainant, from enforced reductions proposed, could not be easily made up (if necessary) by slight advances on traffic that could well stand it—it being made manifest by the testimony of defendants' witnesses (Hauser and Bradshaw) that the complainant's existing rates exclude the seed-consuming mills of New Orleans and Gretna entirely from the interior markets on its lines and prevent the producers of cotton seed from shipping and selling to such mills.

(m) And except to so much of said report and findings as justify the claim of the complainant of a right, by refusing to accept the proposed reductions to compel the manufacture of all cotton seed by mills on its lines of railway in the interior of the State, in order that it may get the haul of the products of such manufacture (testimony of Redfield, Braggins, Hauser, Hamilton and Bradshaw), all of which is accomplished by its own existing tariff.

(n) And except to so much of said report as justifies the claim of complainant a right to foster and promote manufacturing enterprises along its lines, away from its terminals, by rates that are prohibitory so far as the terminals are concerned. (Redfield's answer to X-Int. 11, et seq.). Especially as it appears from the testimony of Mr. Drown that under the rates proposed as well as under complainant's existing rates, more money would be earned by complainant in bringing cotton seed to New Orleans than in hauling same into the interior mills and then hauling out the products of such mills.

(o) And defendants except to the report and findings for the further reason that the same maintain the contention of the complainant that the interior mills on its line are entitled to the maintenance of a practically prohibitory [prohibitory] rate on cotton seed against New Orleans and Gretna for the alleged reason that it gets no out-haul from the mills at the latter places; whereas, the contradicted testimony of the defendants' witnesses (Hauser, Bradshaw and Goldsmith) proves that the shipments of the products of manufacture of cotton seed by the complainant railway, made at New Orleans and Gretna even exceed fifty per cent in weight of all cotton seed received and that the shipments of such products by com-

334 plainant's road from these places is extremely large; so that while complainant does, in fact, discriminate against New Orleans and Gretna for the alleged reason that it would only get the haul in of the raw material the reason is without foundation.

### 3.

And defendants further except to the findings of said Special Master that the proposed reduction is discriminatory so far as country mills are concerned, for the added reasons: 1st, no complaint was made of unreasonableness on that ground; 2nd, because such alleged discrimination would, in reality, increase the earnings of the complainant from the transportation of cotton seed, as is admitted by all its witnesses and shown by the testimony of all the defendants' wit-

nesses—Bradshaw, Hauser, Hamilton and Drown—(as well as by the proposed tariff itself), since the movement to New Orleans would recur; 3rd, because there is no complaint made by the interior mills, and 4th, because in its own tariff in evidence and especially in complainant's rate to Cinclair, it is proved that complainant itself does not practice uniformity in the seed schedules; but gives lower rates to the mill at Cinclair for the alleged reason that it is necessary to enable it to get seed on complainant's line of railway. (See special Cinclair tariff exhibits to deposition of W. M. Barrow.)

## 4.

And defendants except to the said report and findings in that while noting a decline in the gross and net earnings of complainant for the year 1905, as tending to show why the proposed reduction in its mileage rates on the commodities in question should not be made, the report and findings entirely ignore the showing made in the annual report of complainant for the year ending December 31, 1905, filed herein and made part of the testimony of L. S. Thorne, that the decrease in 1905 as compared with 1904 was directly attributable to the yellow fever epidemic in Louisiana in 1905, was therefore abnormal and not to be taken as any criterion whatsoever.

And said report ignores the showing made in said annual report of an increase in net earnings for 1904 over 1903 of \$412,817.23, and the further showing in said annual report of the large decrease in the proportion of expenses to earnings; and further ignores the showing of the steady increase in the traffic of said complainant, interrupted only by the yellow fever, epidemic of 1905. And, 335 in support of these exceptions, defendants especially refer to pages 8, 9, 10, 11, 12 and 13 of said annual report. And the fact is here noted from pages 7 and 9 of said annual report that the Louisiana division of complainant's railways earned net, in 1903-04, more than 80% of the amount earned on the rest of the lines, while the Louisiana mileage is only 695, as compared with 1,131 miles; wherefore, the Special Master has erred in taking the earnings of the entire line and the supposed cost of the entire line as an earning basis.

## 5.

And defendants except to so much of said report as finds that the complainant railway represents an investment of more than \$50,000 per mile, 1st, because the cost or value of the entire lines is not in issue and affords no criterion for local rates in Louisiana, and, 2nd, because said estimate is manifestly wrong since Thorne, complainant's vice president and general manager, shows, on pages 2, 3 and 4 of his deposition, that it cost less than \$20,000 a mile to build the branch lines in Louisiana of 361.79 miles, and the Master's report includes all said mileage. Said witness also proves that \$2,341,319 were paid out of net earnings in acquiring and building the branches in Louisiana. And because in finding the amount of the investment of complainant to exceed \$50,000 per mile, the Special Master has ignored the testimony of said Thorne (p. 6),

that the Natchitoches branch cost not exceeding \$23,000 a mile, including the cost of the Cypress branch, which was not given.

## 6.

And defendants except to said report and findings because it maintains the contention of the traffic manager of complainant, not that the mileage rates attacked would not yield a fair return for the services performed, but would admit other patrons, or would-be patrons, of complainant into territory complainant holds, should be monopolized by the interior mills in respect to procuring raw material for manufacture,—all of which is apparent from the cross-examination of Redfield from answers to cross-interrogatories 10 to 20, inclusive.

## 7.

336 And defendants except to said report insofar as it maintains the proposition that no reduction of complainant's present revenues can be lawfully imposed by lowering mileage rates upon two or three commodities.

And because said report merely adopts the arguments of complainant and is not supported by the evidence and is against the weight of the evidence and denies the right of the Railroad Commission to give other patrons of complainant advantages in freight rates on raw material (cotton seed), in proportion to such as its own tariffs give the Cinclair oil mill.

## 8.

And further except to said report for the reason that its findings deny the right of the State Railroad Commission in the public interest to fix rates not proved to be unreasonable in themselves on a few commodities on the mistaken theory of fact that a loss of revenue would result from the application of the proposed rates on cotton seed.

## 9.

And except to said report and findings in that it ignores the undisputed testimony contained in the exhibits produced by W. M. Barrow, showing that hundreds of thousand- [thousands] of dollars have been taken by complainant from its receipts from operation, used for betterments and permanent improvements and charged to expense of maintenance and operation.

And for other and manifest reasons apparent upon the face of said report.

Wherefore, defendants pray that their exceptions be maintained and said report and findings be set aside, and that a final decree be entered dismissing said bill of complaint.

(Signed)

WALTER GUION,  
*Att'y Gen'l of La.*  
T. M. MILLER,  
*Sol'l'rs for Def'd'ts.*



337 *Memorandum of Complainant on Objections of Defendant to Master's Report.*

Filed March 7th, 1908.

United States Circuit Court, Eastern District of Louisiana.

No. 56.

TEXAS &amp; PACIFIC RAILWAY COMPANY

VS.

THE RAILROAD COMMISSION OF LOUISIANA et al.

Memorandum as to Objections Filed by the Commission.

Page 3, paragraph "A." This is merely argument of counsel. Statement that Mr. Redfield testified to that effect is not true.

"B." This argument of counsel not supported by the evidence.

"C." Statement is not true.

"D." Not true.

"E." Not true. Actual cost of road is testified to by Mr. Tower and Mr. Thorne and the valuation shows this does not include cost of equipment or betterments since June, 1888.

"F." Statement not true. Mr. Tower shows actual cost of road, which does not include equipment and betterments since June, 1888, and the reports attached are made an exhibit to cross-examination of witnesses shows the same facts.

"G." This is but argument of counsel. Figures were pointed off wrong, but this does not change results as after paying interest charges and equipment obligations, nothing would be left, and Mr. Thorne's deposition shows that the road is actually in need of \$2,000,000 in order to improve its property.

"H." This is argument of counsel.

"I." This is argument of counsel.

338 "J." This is argument of counsel.

"K." This is argument of counsel.

"L." This is argument of counsel.

"M." This is argument of counsel.

"N." This is argument of counsel.

"O." This is argument of counsel.

Page 8, paragraph 3. This is argument of counsel.

Page 9. This is argument of counsel.

Page 10. This is argument of counsel.

Page 11. This is argument of counsel.

*Memorandum as to Report.*

Page 11 of the report should be amended by adding after "\$50,610.07," at bottom of page, the following:

"This cost of construction per mile does not include cost of equip-

ment and betterments since June, 1888." See Mr. Towner's answer to 14 cross-interrogatory.

Page 18 of the report should be amended by adding after "\$50,-610.07," fourth line from top of page, the following:

"This does not include equipment and betterments since June, 1888."

Bottom of page 18 the decimal 0.46% should be changed to 4.60.

At top of page 19, first paragraph should be eliminated and suggest that the following be inserted:

"Out of the amount of gross revenues above stated the company has to meet its interest charge of \$2,725,650.00; this being 5% on the valuation of \$29,853.78 per mile."

(See page 6 of annual report of 1905, called for and made 339 an exhibit to cross-interrogatory of Mr. Thorne). It also has to meet its equipment obligation of \$1,429,028.64. (See annual report 1905, page 20). And is [it] has to make needed improvements and betterments to more than \$2,000,000.00 per year, as shown by deposition of Mr. Thorne. Think the following should be added to second paragraph, page 19, after the word "investment:"

"And further deprives the company of revenues needed in the actual operation of the road."

Page 20, paragraph "E," suggest that the following addition be made after the word "find."

"And that the company needs large sums for improvements and betterments."

In the same paragraph, the following change should be made after word "returns."

"Practically no revenues on investments," and the following words should be eliminated "only 0.46%."

*Exceptions to Original and Supplemental Report of Master.*

Filed April 2, 1908.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 56.

THE TEXAS & PACIFIC RAILWAY Co.

vs.

THE RAILROAD COMMISSION OF LA.

Now come the defendants, the Railroad Commission of Louisiana and C. L. De Fuentes, Overton Cade and J. J. Meredith, members of said commission, through their undersigned solicitors, and hereby renew the exceptions to the report of the Special Master, which exceptions were filed on the 7th day of March, 1908, and pray that the said exceptions be maintained and that the said report of the master be not approved or adopted, and that judgment be rendered in 340 favor of defendants and against complainants as prayed for, the whole according to the prayer of said exceptions and the

prayer of the answer filed by defendants herein; and defendants further except to the findings of fact and conclusions of law found by said Special Master contained in the supplemental report filed by him, and which may not be contained in his first or original report, and by way of further exception say that said supplemental report was found by the master and filed by him in this Honorable Court without notice to defendants and without affording them an opportunity of excepting to the same and filing their exceptions with the master, and defendants specially except to the findings of fact and conclusions of law contained therein for the following reasons and in the following particulars, to-wit: That the master erred in finding and holding that the objections and exceptions to his original report contained in Par. A, page 3 of defendant's exceptions are answered by the opinion rendered by Mr. Justice Brewer in the case in Chicago and N. W. Railway vs. Dey, 35 Fed. Rep., p. 866, for the reason that it has been fully shown by several of the witnesses who have testified in this case and especially by the testimony of Geo. C. Hauser, Geo. G. Bradshaw, Chas. W. Drown and others, that the cotton-seed oil mills in New Orleans and Gretna are now prohibited from purchasing cotton-seed along certain portions of the line of complainant's railroad, by reason of the tariff of charges now in existence for the transportation of same to New Orleans and Gretna, but that their purchases in that territory will be largely increased and the number of tons brought to New Orleans and Gretna greatly increased by the putting in of the tariff of charges ordered to be put in by defendants, and that the receipts by complainants from such cotton-seed transportation will be greatly augmented.

Second. Defendants except to said supplemental report with its findings and conclusions, in holding that the quantity of cotton-seed moved by rail transportation will not be influenced by the rates or charges for such transportation, and that the master has likewise erred in finding that the only result to be brought about by the putting into effect of the tariff of charges proposed by the order of defendants will be to increase long hauls, decrease short hauls and diminish complainant's revenue from the product of cotton-seed. That while the putting into effect of the order of defendants, which is complained of in the bill of complaint filed by complainants, will result in more long hauls of cotton-seed by complainants, the revenues to be derived by complainants from the products of cotton-seed will not be reduced and that complainant's revenues from the transportation of cotton-seed will be largely increased. In any event, however, defendants except to the master's considering the question of a possible falling off in revenue to complainant from the transportation of cotton-seed products, and affirm that he should consider only the question of the effect on the revenues to be derived by complainants from the transportation of cotton-seed by the putting into effect of the order of defendants.

Third. Defendants except further to the supplemental report of the master with its findings and conclusions in declaring that no dividend has ever been paid on the stock of the complainant

railroad, and that more money than complainant obtains from its revenues is needed for improvements.

That while it may be true that the holders of stock in complainant's railroad may not have been paid in money any dividends upon their shares of stock, it is not true that the complainant company has not derived from the operation of its railroad, revenues which might have been so applied, because as shown by the testimony of Mr. Thorne, dep., p. —, the sum of \$6,854,319.13 was expended in equipping and extending new lines of railroad known as branch lines, which have been paid for to the extent of the sum of \$2,341,319.13 by and from the earnings of complainant.

Fourth. Defendants except to the master's supplemental report and his findings and conclusions, in declaring that the net revenue per mile in Louisiana derived by complainant from the transportation of cotton-seed is less than that derived by complainant for either its entire system or from its business in the State of Texas, but that if such be the case it is owing to the fact that only a small percentage of cotton-seed in proportion to the total quantity transported in Louisiana is carried on long hauls, and defendants further except to that part of the said supplemental report which contains the statement that the rate for the transportation of cotton-seed in Louisiana has declined since 1896, 0.29 cents per ton per mile.

Fifth. Defendants except to so much of the Special Master's supplemental report and the findings and conclusions of 342 same found on page 10 of said report, which is in the following language:

"Par. 1 (p. 6) Defendants' objections. Nothing said in the objection affects the unfairness of the flat or concentration charge of three (3¢) cents per hundred pounds on all distances and to all mills, except those in New Orleans and Gretna. It would be unfair even if applied to the New Orleans and Gretna mills, because the freight rate on the actual movement,—i. e., 100 miles and further—would make the per cent. of increase in rate by the imposition of the concentration rate very small, while on the smaller freight rate for shorter distances the per cent. of increase would be considerable and would increase as the distance decreased. It is absolutely unfair when New Orleans and Gretna are entirely relieved."

for the reasons following, to-wit:

(a) The matter of the supposed 3¢ differential is not involved in the issues presented in this case, or set forth in the objections and exceptions to the original report.

(b) It does not appear that any objection is made at the interior mills to this charge as discriminatory. On the contrary, it does appear that the interior mills are satisfied with the present adjustment.

(c) The complainant asserted, in its bill of complaint, no objection to being permitted by the Railroad Commission to keep in force this concentration charge of three (3¢) cents as in the nature of a guaranty that the cotton-seed oil mills would ship out by it as much — (1,000) one thousand pounds of product for each ton of the cotton-seed on which this charge is paid.

(d) That no such guaranty was or is required of the New Orleans and Gretna mills, for the reason that the testimony noted in the exceptions to the original report of the Special Master herein abundantly shows that the New Orleans and Gretna mills do ship out by complainant's railroad many times one thousand pounds of the product of cotton-seed for each ton of seed received by it.

(e) That this three-cent charge against the interior mills is only a guaranty in its ultimate results.

343 (f) That the rate on cotton-seed to New Orleans and Gretna charged by complainant was, before the order complained of, strictly and intentionally prohibitory as is virtually admitted by complainant's traffic manager, without this charge of three cents, whereas, it is not so nor intended so to be with reference to the interior mills which, according to the admitted policy of the complainant should have, as they are alleged to be entitled to, all the cotton-seed produced on complainant's line of railroad.

(g) That the New Orleans and Gretna rate as proposed by the order of the Railroad Commission, without the concentration charge of three cents, will simply restore a movement of cotton-seed to New Orleans and Gretna which the policy of complainant, in discriminating in favor of the interior mills in the State of Louisiana had destroyed; and that the proposed rate is even greater than a voluntary rate of complainant which was taken out at the solicitation of J. C. Hamilton in the interest of an interior mill.

Sixth. Defendants except further to so much of the Special Master's supplemental report on page 12, as asserts that the unfairness of complainant's pre-existing rates is not before him, for the reason that, of necessity, its previous rates in respect to this unreasonable-ness and as proposed to be reduced to something approaching the former rates is necessarily brought into view by way of comparison, at least, and in comparison with rates charged elsewhere for similar services, and as tending to show that by deliberate calculation and purpose the intent of complainant thereby is to prevent a movement of this traffic to the factories established for the manufacture of cotton-seed at the New Orleans and Gretna terminals before the policy of complainant to discriminate in favor of interior mills along its line appeared.

Seventh. Defendants except to so much of the Special Master's supplemental report found on the fourteenth or last page of same, where he says:

"From these facts it follows, as a legal conclusion, that where an income without mismanagement, extravagance or dishonesty suffices only to pay interest on the mortgage bonds, and indifferently to maintain the property, leaving nothing for dividends to stockholders, it should not be still further reduced, particularly, where the reduction would mean a still further failure to  
344 maintain the property so that the company's duties, as a public carrier, could be adequately fulfilled."

for the following reasons, to wit:

(a) That the reasonableness vel non of the rate on the particular traffic here involved, and which is proposed to be put in, is not shown



by any evidence to be confiscatory and is not to be determined by the test so proposed by the said report.

(b) That the supplemental report of the Special Master and the evidence introduced by complainant have made no attempt to separate the cost of complainant's railway in Louisiana and elsewhere, and, in making up the average, no reconing [reckoning] is had of the difference in the original cost or the cost of maintenance of branch lines and extensions in the State of Louisiana, and which, confessedly and as shown by the sworn appraisement, made for taxes by the special agent of complainant, cost far less than the main lines of complainant's railroad.

(c) That this portion of said supplemental report is purely argumentative.

(d) That according to the test here proposed, without evidence to differentiate conditions in Louisiana, this traffic is made to bear expenses and losses elsewhere that are out of proportion to the expenses of operating complainants [complainant's] railway in Louisiana, as shown and noted in the exceptions to the original or first report filed by the master herein.

(e) That if, as shown here, the owners of a railroad see fit to build other branch lines from its earnings, thereby increasing its earning power for the future, instead of taking such earnings and using the same as dividends, that circumstances cannot and ought not to justify rates on a portion of complainant's line which are so excessive as to prohibit all movement of cotton-seed and are out of line with rates elsewhere and out of line with complainant's own previous rates.

In connection with this objection, the testimony of Mr. Thorne is referred to, where he states that more than \$2,000,000.00 of the earnings of complainant derived from the operation of its railroad has been invested within the past few years, by complainant, in building branch lines in the State of Louisiana.

(f) That a particular rate, unreasonable in itself, cannot be justified even if unremunerative and, certainly, when prohibitory, can it not be justified by a need of revenue, and

(g) Defendants repeat, as against this conclusion of the master, that the evidence in this case shows that by adopting the rate proposed by the Railroad Commission, and thereby restoring a natural and free movement of cotton-seed to New Orleans and Gretna, complainant's revenue from this traffic will be largely increased.

And defendants show that what is said by the master concerning the opinion of the Court in the case of Chicago and N. W. Ry. vs. Dey, 35 Fed. Rep., 866, has no application to a case like this case where an established movement of cotton-seed, which it is sought to restore, has been checked by prohibitory charges or rates for transporting the same.

Eighth. Defendants except to the Special Master's supplemental report and his findings and conclusions, wherein he declares that the Southern Pacific Railroad has the same rate for the transportation of cotton-seed as that charged by complainants, but that defendants had taken no action against that railroad company by reason of the rates thus charged by it for the transportation of cot-

ton-seed, thereby attempting to create the impression that defendants are discriminating in favor of that railroad and against complainants, which is not a fact.

That while this statement of the master may be true, it is a fact, which was fully brought out in the evidence given before the master, that there is practically no cotton-seed raised along the line of the Southern Pacific Railroad, while there is a very large quantity raised along the line of complainant's railroad.

Ninth. Defendants except to the master's report with its findings and conclusions in holding that the evidence in this case shows that the cotton-seed oil mills in New Orleans have not made much effort to obtain cotton-seed from points in Louisiana along the line of the Illinois Central and the Northeastern Railroads, and that "there is nothing in the evidence to explain this peculiar condition." That so far from this being the case, the cotton-seed oil mills in New Orleans and Gretna have made every possible effort, as the evidence shows, to obtain cotton-seed from every portion of the State of Louisiana, but that there is practically no cotton-seed produced along the line of either of said railroads in Louisiana.

Wherefore, defendants pray that the above and foregoing exceptions to the supplemental report of the Special Master in the above numbered and entitled case, as well as the exceptions to the original report of the master, already filed herein, be maintained; that said original and supplemental reports be not approved or adopted as a basis for a decree or judgment herein; and that judgment be rendered in favor of defendants and against complainant as prayed for in their answer herein, as well as for the reasons set forth in the exceptions to the original and the supplemental reports of the Special Master.

And for all and general relief.

(Signed)

WALTER GUION,  
*Attorney General, Solicitor for Defendants.*

(Signed)

T. M. MILLER,  
*Solicitors for Defendants.*

*Notice of Filing Exceptions to Original and Supplemental Report.*

Extract from the Chancery Order Book.

B. R. Div.

No. 56.

THE TEXAS & PACIFIC RAILWAY CO.

vs.

THE RAILROAD COMMISSION OF LA.

THURSDAY, APRIL 2, 1908.

The defendants, the Railroad Commission of Louisiana and C. L. De Fuentes, Overton Cade and J. J. Meredith, through their

solicitors, Walter Guion and T. M. Miller, has this day filed exceptions to the original and supplemental report of Solomon Wolff, Special Master herein.

347      *Supplemental and Amended Bill of Complaint.*

Filed December 4th, 1911.

In the United States Circuit Court, Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division.

No. 56.    In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY, Plaintiff,

vs.

RAILROAD COMMISSION OF LOUISIANA et als., Defendants.

To the Honorable the Judges of the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division:

The Texas & Pacific Railway Company, plaintiff, in the above entitled and numbered cause with leave of Court first had, brings this its supplemental and amended bill of complaint against the Railroad Commission of Louisiana and against C. L. de Fuentes, Overton Cade and J. J. Meredith, members of said Railroad Commission, and thereupon your orator complains and says:

First. That on or about the 30th day of January, 1906, your orator exhibited and filed in this Honorable Court its bill of complaint against the Railroad Commission of Louisiana and the individual defendants herein named as members of said Railroad Commission, wherein and whereby among other things your orator complained:

(a) That prior to December 12th, 1905, your orator had promulgated and had in force and effect a tariff of rates on cotton-seed and cotton-seed products moving between points in the State of Louisiana that was just, reasonable and fair, and that said tariff of rates had prior to said date been filed with said Railroad Commission and had by them been approved and adopted as the official rates of said commission, and that thereafter said commission, on a hearing had on May 22nd, 1905, had declared that said tariff of rates was fair, just and reasonable. That notwithstanding that fact, and the fact that no change in the conditions surrounding the movement of that traffic had taken place justifying or requiring any change in said tariff of rates, the said commission, after several hearings on  
348    January 9th, 1906, finally promulgated its Order No. 484, establishing and putting into effect a mileage rate on cotton seed and cotton-seed products, a copy of which was attached to the original bill of complaint herein as "Exhibit A."

(b) That under the tariff of rates so promulgated and sought to

be enforced by said Railroad Commission, your orator will be required to handle and move said commodities at an unreasonable, unjust and unremunerable rate, and at a rate that will not afford a reasonable return for the services rendered in transporting said commodities, and that using the tonnage moved by your orator for the year ending December 31st, 1905, as a basis, it will mean a loss to your orator in the sum of twenty-eight thousand and ninety-five dollars and seven cents (\$28,095.07) or a reduction equivalent to about twenty-five per cent. upon the rates which were in effect prior to the promulgation by said Railroad Commission of its said tariff, and that the enforcement of such rate would result in the deprivation to that extent of your orator's property without due process of law.

(c) That in addition to reducing your orator's revenue in the proportion above set forth, said tariff makes a reduction in the distance mileage rate theretofore in effect by your orator upon said commodities all the way from thirty-three and a third to fifty per cent., and in the event that the movement of such commodities in the future will be greater for short distances than heretofore, the reduction in your orator's revenue will be much greater than hereinabove set forth.

(d) That in consideration thereof, your orator prays after due proceedings had, that an injunction may issue restraining and enjoining the Railroad Commission of Louisiana, and the individual members thereof from putting or continuing in force or effect said tariff of rates designated as Order No. 484, and restraining the Railroad Commission and the individual members thereof from instituting or authorizing or directing any others to prosecute or institute any suit or action against your orator for the recovery of any penalties under and by virtue of any of the provisions of the constitution of Louisiana, by reason of the failure of your orator to put into effect said Order No. 484, and that said order be canceled and declared null and void and of no effect.

349      Second. Thereafter, said defendants on the 27th day of March, 1906, filed their joint and several answer admitting certain allegations of the bill of complaint, but denying, among others, that said tariff of rates as established by said Order No. 484 was unjust, unreasonable and unum-erative [unremunerative] and denying that the complainant's tariffs in effect before the promulgation of that order for the handling of all commodities between points in the State of Louisiana had already been reduced as low as possible consistent with earning a fair return for the operation of its road and upon the capital invested in its property, and that said company could not afford to have its revenue any further reduced without seriously impairing its ability to furnish the character of service demanded by the public, and the answer prayed a dismissal of the bill.

Third. That, thereafter, a replication was filed so said answer by your orator and the cause was referred to a Special Master to hear the evidence and to report his conclusions of fact and law to this Honorable Court, and the respective parties hereto did so appear and produce their witnesses and evidence before said Special Master, and the evidence having been concluded, said Special Master filed herein

on the 17th day of March, 1908, his report to which exceptions were filed by the defendants. The said cause was in this situation on the 9th day of October, 1908.

Fourth. That the tariff of rates of your orator which was in existence prior to the promulgation of said Order No. 484, provided for a mileage rate on cotton-seed and cotton-seed products between points in the State of Louisiana, and contained among others, the following provision:

"Refer to above described tariff as amended and increase rates provided therein three cents per one hundred pounds on cotton-seed C. L. to all oil mill points on the Texas & Pacific Railway in Louisiana, except at Shreveport, La., which is now provided for on page 3 of original tariff.

"When the product is reshipped from the oil mill points over the Texas and Pacific Railway, the net rates, i. e., three cents per hundred pounds less than gross rates shall be protected through claim account, and as a basis of settlement for such refund claims it is understood and agreed that one ton of product (other than hulls, cotton linters and ashes) out is equivalent to two tons of  
350 cotton-seed inbound. No consideration is to be given to out-bound shipments of cotton-linters and cotton-seed hulls and ashes in this connection."

And your orator begs leave to refer to said tariff and the supplements and amendments thereof, and make same a part of this bill as "Exhibit A" hereto.

That said Order No. 484 not only reduced the mileage rate on cotton-seed and cotton-seed products expressed in said tariff of rates "Exhibit A" hereto and made a reduction in the distance mileage rate specified in said tariff, but also modified and changed those provisions of the tariff hereinabove set out by providing as follows:

"The above rates on cotton-seed will apply when fifty per cent. of the products of the seed hauled in other than linters, hulls and ashes are shipped out via the Texas and Pacific Railway. Otherwise, the rates on cotton-seed will be three cents per one hundred pounds higher. This applies except on seed shipped into New Orleans or Gretna."

Fifth. That your orator being dissatisfied as aforesaid with said order and ruling of said Railroad Commission in so promulgating said Order No. 484, instituted this suit, as it had a right to do under the constitution of Louisiana, contesting the validity of the whole and every part of said order in so far as the same attempted or purported to make any change in the tariff of rates "Exhibit A" hereto, theretofore put into effect by your orator and approved by said Railroad Commission.

That notwithstanding the fact that your orator had contested by such suit said Order [No.] 484 as imposing unjust, unreasonable and unremunerative rates upon your orator, and the said matter was pending in, and still undetermined by this Honorable Court on the 9th day of October, 1908, said Railroad Commission of Louisiana after due notice of hearing promulgated its Order No. 923, whereby it in effect further modified said tariff of rates as established by your



orator's said tariff of rates and its own tariff of rates as established by said Order No. 484 by providing: "That, effective October 25th, 1908, all concentration charges on cotton-seed at points in Louisiana where actual water or rail does not exist be, and the same are hereby canceled and abolished, and the present net rates in effect are to be charged on all inbound and outbound shipments of  
351 cotton-seed and cotton-seed products." That the said provision of said Order No. 923 prevented your orator, at all points where same applied, from collecting and receiving and retaining until the manufactured product could be shipped out over the railroad of your orator, three cents per hundred pounds which it was authorized by its said tariffs and by said commission's Order No. 484 to collect, and required your orator to transport cotton-seed at the net rates fixed and established by said Order No. 484, irrespective of the fact whether or not manufactured products from such cotton-seed were shipped out over the railroad of your orator. That the rates established by your orator by its said tariff of rates "Exhibit A" hereto, were fixed and based upon the expectation and requirement that, at least, fifty per cent. of the manufactured products from the cotton-seed would and should be shipped out over the road of your orator at the rates established in said tariffs for the manufactured product, and the tariff of rates fixed and established by said commission's Order No. 484 was so fixed and established upon the same expectation and requirement. That as said Order No. 923 in effect cancels said requirements, your orator, if said Order No. 923 were enforced, would be required to transport cotton-seed between points in the State of Louisiana at the unjust and unremunerative mileage rates established in said Order No. 484, and in effect amounts to a further reduction and unjust modification of the just and fair rates established by your orator in its said tariff of rates, "Exhibit A" hereto. At this time your orator is unable to state to what extent the modification made by said Order No. 923 will further affect the revenues and incomes of your orator from the transportation of cotton-seed and cotton-seed products, but in view of the fact that your orator by the institution of this suit had contested the reasonableness and the validity of said Order No. 484, and that this cause was pending and undetermined in this Court, said Railroad Commission had not the right to so modify and change the tariff of rates of your orator, "Exhibit A" hereto pending the determination of this cause, and your orator by this its supplemental bill contests the reasonableness and the legality of the action of said Railroad Commission of Louisiana in promulgating and attempting to make effective said Order No. 923; and in order that your orator might not be held and considered as having acquiesced in or agreed to the right of said Railroad Commission of Louisiana to abrogate, modify or reduce the tariff of rates and the provisions of its said tariff, "Exhibit A" hereto.

352 In consideration of the premises your orator prays that your Honors may grant unto your orator writs of subpoena to be issued out of and under the seal of this Honorable Court, and directed to said defendants commanding said defendants and each

of them to appear in this Court at some certain date to be therein named to answer in the premises, but not under oath, and to abide by and perform such decrees and orders as may be herein rendered, and that your orator may, in addition to the relief prayed for in its original bill of complaint, have a decree declaring that said Order No. 923 of the Railroad Commission of Louisiana is also null, void and of no effect for the reasons in said original bill of complaint and herein stated; and your orator prays for such other or further relief as may be proper in the premises.

THE TEXAS & PACIFIC RAIL-  
WAY COMPANY,

(Signed)

By HOWE, FENNER, SPENCER &  
COCKE, *Its Solicitors.*

STATE OF LOUISIANA,  
*Parish of Orleans, ss:*

William F. Braggins, being duly sworn, deposes and says that he is the general agent of The Texas & Pacific Railway Company, complainant in the above entitled and numbered suit, and as such is agent of the complainant and is authorized on its behalf to make this affidavit; that he has read the foregoing supplemental bill of complaint and knows the contents thereof, and that same is true of his own knowledge except as to matters therein stated to be upon information and belief, and as to such matters he believes it to be true.

(Signed)

W. F. BRAGGINS.

Sworn to and subscribed before me this 3rd day of December, 1908.

(Signed)

PIERRE D. OLIVIER,

[SEAL.]

*Notary Public.*

*Order.*

Upon the reading and consideration of the foregoing supplemental bill of complaint, it is hereby ordered that the plaintiff have leave to file same.

New Orleans, December 4, 1908.

(Signed)

EUGENE D. SAUNDERS,

*United States Judge.*



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# **CARD 4**

353 *Notice of Filing Supplemental and Amended Bill.*

Extract from the Chancery Order Book.

FRIDAY, December 4, 1908.

B. R. Div.

No. 56.

THE TEXAS & PACIFIC RAILWAY COMPANY  
VS.  
RAILROAD COMMISSION OF LOUISIANA et al.

The parties in interest are hereby notified that the Texas & Pacific Railway Company, through its solicitors, Howe, Fenner, Spencer & Cocke, has this day filed a supplemental and amended bill of complaint herein, upon which the following order has been made, to-wit:

Upon the reading and consideration of the foregoing supplemental bill of complaint, it is ordered that the plaintiff have leave to file same.

(Signed)

EUGENE D. SAUNDERS,  
United States Judge.

*Motion and Order to Fix Master's Fee.*

Filed May 29th, 1909.

United States Circuit Court, Eastern District of Louisiana.

No. 56. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY  
VS.  
THE RAILROAD COMMISSION OF LOUISIANA.

On motion of Howe, Fenner, Spencer & Cocke, attorney- for the complainant in the above entitled and numbered cause, and on suggesting to the Court that it is proper that the compensation of Solomon Wolff, Esq., Special Master herein, for his service in the matter of the hearing had before him and the reports made by him herein in his said capacity as Special Master should be fixed by the Court and taxed as costs herein.

It is ordered that the defendant, the Railroad Commission of Louisiana, through its counsel, the attorney general of the State of Louisiana, and the said Solomon Wolff, Special Master, be cited to show cause, if any they have or can, on Saturday, the 5th day of June, 1909, at eleven o'clock A. M., at New Orleans,

why the compensation of the said Solomon Wolff, Esq., as Special Master as aforesaid, should not be fixed at a sum deemed proper by the Court, and as such taxed as part of the costs of this cause.

Service accepted.

(Signed)

"

WALTER GUION, *Att'y General*;  
S. WOLFF,  
*For the Railroad Commission of Louisiana.*

*Hearing and Order Fixing Master's Fee.*

Extract from the Minutes, April Term, 1909.

NEW ORLEANS, *Saturday, June 5, 1909.*

Court met pursuant to adjournment.

Present: Rufus E. Foster, District Judge.

B. R. Div.

No. 56.

The TEXAS & PACIFIC RAILWAY COMPANY

VS.

The RAILROAD COMMISSION OF LOUISIANA.

This cause came on this day to be heard upon the motion to fix the fee of Solomon Wolff, Esq., Special Master herein.

Present:

Howe, Fenner, Spencer & Cocke, Solicitors for Complainant.  
Walter Guion, Attorney General for the Defendant.

Whereupon, after hearing counsel, it is ordered that the fee herein to be allowed said Special Master be fixed at the sum of five hundred dollars and that said sum be taxed as costs in this case.

355 *Answer to Supplemental and Amended Bill.*

Filed November 29th, 1911.

In the Honorable the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division.

No. 56.

THE TEXAS & PACIFIC RAILWAY COMPANY

VS.

RAILROAD COMMISSION OF LOUISIANA et al.

The joint and several answer of the Railroad Commission of Louisiana, C. L. De Fuentes, J. J. Meredith, and Shelby Taylor,



defendants, to the supplemental and amended bill of complaint exhibited against them in this Honorable Court by the Texas & Pacific Railway Company, the complainant:

These respondents now and at all times hereafter reserving unto themselves the benefit of any and all exceptions that can or may be taken to the said bill of complaint, on account of its many errors, insufficiencies and uncertainties for answer thereto, and to such parts thereof as they are advised it is material for them to answer unto, answering, say:

## I.

They admit all and singular the allegations contained in the first paragraph of the supplemental and amended bill of complaint that, on the 30th day of January, 1906, complainant exhibited and filed in this Honorable Court, its bill of complaint against respondents and that said bill of complaint contains the allegations set out in the said first paragraph of said supplemental and amended bill of complaint, and the several subdivisions thereof enumerated under the letters (a), (b), (c) and (d), and respondents admit, further, all and singular the allegations contained in the second and third paragraphs of the said supplemental and amended bill of complaint.

## II.

Respondents admit that the tariff of rates on complainant's railroad, which was in existence prior to the promulgation of Order

No. 484, finally adopted by respondent, the Railroad Commission, on the 9th [of] January, 1906, provided for a mileage rate on cotton-seed and cotton-seed products transported between points in the State of Louisiana. Respondents deny, however, that said order contained the provision as set forth in the fourth paragraph of the said amended and supplemental bill of complaint, but that it contained the following provision:

"refer to herein described tariff as amended and increase rates provided therein three cents per one hundred pounds on cotton-seed, car loads, to all oil mill points on the Texas & Pacific Railway in Louisiana, except to Shreveport, La., which is now provided for on page 3 of original tariff, Sinclare Plantation, La., which is provided for below and New Orleans, La.

"When the product is reshipped from the oil mill points over the Texas and Pacific Railway, the net rates, i. e., three cents per hundred pounds less than gross rates, shall be protected through claim account, and, as a basis for settlement of such refund claims, it is understood and agreed that one ton of product (other than hulls, cotton linters and ashes) out, is equivalent to two tons of cotton-seed inbound. No consideration is to be given to outbound shipments of cotton linters and cotton-seed hulls and ashes in this connection."

Respondents admit, further, that said Order No. 484 reduced the

mileage rate on cotton-seed and cotton-seed products, and made a reduction in the distance mileage rate specified in the tariff which complainant had put in and established as alleged by complainant, and that it also modified and changed the provisions of said tariff therefore in force by providing that:

"The above rates on cotton-seed will apply when fifty per cent. of the products of the seed hauled in, other than linters, hulls and ashes are shipped out via the Texas & Pacific Railway. Otherwise, the rates on cotton-seed will be three cents per one hundred pounds higher. This applies except on seed into New Orleans or Gretna.

### III.

Respondent admit that the complainant brought suit in this Honorable Court, as alleged by it, in the fifth paragraph of the bill of complaint, but they deny that complainant had a right to  
357 do so under the constitution of Louisiana, for the reason that said Order No. 484 was a legal and valid order and one which respondent, the Railroad Commission of Louisiana had the right, and was fully authorized to adopt and promulgate; and they admit that while said suit, contesting the validity and legality of said order, was pending in and undetermined by this Honorable Court, respondent, the Railroad Commission of Louisiana, did, after hearing and due notice of same, promulgate its Order No. 983, but respondents deny that the effect of said order has been to modify the tariff of rates which had been established by complainant, previous to the adoption of Order No. 484 or by the tariff of rates as ordered by respondent, the Railroad Commission of Louisiana, to be put in, by and through that order, as will be fully shown by said Order No. 923, a copy of which respondents beg leave to refer to and to make a part of this answer as Exhibit No. 1."

Respondents deny that said Order No. 923 provides as set out in the fifth paragraph of said amended and supplemental bill of complaint "that, effective October 25th, 1908, all concentration charges on cotton-seed at points in Louisiana where actual water or rail does not exist be and the same are hereby canceled and abolished, and the present net rates in effect are to be charged on all inbound and outbound shipments of cotton-seed and cotton-seed products," but respondents admit it is provided in and by said Order No. 923, that, "effective October 25th, 1908, all concentration charges on cotton-seed at points in Louisiana, where actual water or rail competition does not exist, be and the same are hereby canceled and abolished, and the present net rates in effect are to be charged on all inbound and outbound shipments of cotton-seed and cotton-seed products," and respondents admit that, while it is true, as alleged by complainant, that complainant will be prevented by the terms of said Order No. 923, if enforced, from collecting, receiving and retaining for cotton-seed shipped to all non-competitive points in Louisiana, the three cents for each one hundred pounds so shipped which, under the tariff of charges, fixed and established by Order No. 484, and other tariffs which had been in existence previous to

the adoption and promulgation of that order, complainant would have had the right to collect, receive and retain until the shipment of fifty per cent. of the manufactured product of such cotton-seed from the mills where the same had been concentrated and converted into manufactured products, nevertheless, respondents deny that

the effect of said Order No. 923 has been or will be to require complainant to transport cotton-seed at the net rates fixed and established by said Order No. 484, except to those points from which complainant would have no competition in the outhaul of the manufactured products of such seed, and that said Order will in no manner interfere with the three-cent concentration charges which complainant is now entitled to in all other instances where the manufactured products from such cotton-seed are not shipped out from the point of manufacture over complainant's railroad, as said Order Number 923 does not and was not intended to interfere with complainant's right to collect, receive and retain said concentration charge of three cents per hundred pounds of cotton-seed at all competitive points, but was only intended to deny to plaintiff the right to collect, receive and retain the same at non-competitive points, since at all such points complainant would in all cases have and receive the out haul of the manufactured products from such cotton-seed, from the point where such manufactured products had been produced.

Respondents admit that the rates for the transportation of cotton-seed by complainant's railroad, as had been established by complainant previous to the adoption and promulgation of Order No. 484, as well as the rates fixed and established by respondent, the Railroad Commission of Louisiana, in and by that order, were established and based upon an expectation and requirement that fifty per cent. of the manufactured products from cotton-seed would be shipped out over complainant's railroad from the several points of manufacture and at the aforesaid rates.

Further answering, respondents aver that as Order No. 923 in no manner conflicts with or affects Order No. 484, complainant will be required to transport cotton-seed between points in Louisiana at the rates established in and by said Order No. 484, if put into effect, but respondents deny that said rates are unjust or unremunerative, and they deny further that said Order No. 923, in effect cancels the requirement hereinbefore referred to in respect to the payment of a three-cent concentration charge to complainant for each one hundred pounds of cotton-seed shipped in to a cotton-seed oil mill where fifty per cent. of same is not shipped out by complainant's railroad.

Respondents deny further that said Order No. 923, in effect, amounts to a reduction of the rates established by complainant in the tariff of rates established by it, but which rates are neither just nor fair and which have been superseded by the tariff of rates adopted and sought to be put in effect and enforced by respondents in and through Order No. 484, and they deny that said Order No. 923 amounts to or is in any sense a modification of any tariff of rates now or heretofore in existence, respecting the

transportation by complainant of cotton-seed and cotton-seed products.

Respondents deny, further, that because complainant had contested the reasonableness and validity of Order No. 484, and that the suit contesting said order was still pending and undetermined in this Honorable Court, your respondent, the Railroad Commission, was without authority to adopt Order No. 923, which is no sense undertakes to modify or change any tariff of rates in existence or sought to be put into effect, but which merely seeks to relieve shippers of cotton-seed, when shipped to points on complainant's line of railroad where the same may be manufactured into various products at and from which points complainant would have no competition in the outhaul of such products, either by rail or water from a concentration charge of three cents for each one hundred pounds of cotton-seed shipped to points of manufacture which had been put in to guarantee to complainant the outhaul of at least fifty per cent. of such manufactured products.

And now having fully answered, confessed, traversed and avoided or denied all the matters in said supplemental and amended bill of complaint, material to be answered according to the best of their knowledge and belief, respondents pray this Honorable Court to enter its judgment that these respondents be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained, and for such other and further relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

(Signed)

WALTER GUION,

*Attorney General, Solicitors for Defendant.*

(Signed)

T. M. MILLER,

*Of Counsel.*

360 *Notice of Filing Answer to Supplemental and Amended Bill.*

Extract from the Chancery Order Book.

SATURDAY, June 29, 1909.

B. R. Div.

No. 56.

TEXAS & PACIFIC RAILWAY CO.

vs.

RAILROAD COMMISSION OF LOUISIANA et als.

The Railroad Commission of Louisiana and C. L. DeFuentes, J. J. Meredith and Shelby Taylor, defendants, through their solicitors, Walter Guion, attorney general, and T. M. Miller, have this day filed their joint and several answer to the supplemental and amended bill of complaint herein.



*Motion to Set Down Exceptions to Master's Report for Trial and Order.*

Filed April 6th, 1910.

United States of America.

Circuit Court of the United States, Fifth Circuit and Eastern District  
of Louisiana, New Orleans Division.

B. R. Div.

No. 56.

TEXAS &amp; PACIFIC RAILWAY COMPANY et al.,

VS.

THE RAILROAD COMMISSION OF LOUISIANA et al.

On motion of Walter Guion, attorney general, of counsel for Defts. herein, it is ordered by the Court that the exception to master's report, be set for trial Friday, the 29th day of April, 1910, at 11 o'clock A. M., and that Howe, Fenner, Spencer & Cocke, counsel of record for said defendant be notified thereof.

[Indorsed:] No. 56. United States Circuit Court. T. & P. Ry. Co. et al. vs. Railroad Com. of La. Motion to Set Down Exception to Master's Report for trial. Entered and filed April 6th, 1910.  
— — —, Clerk.

361 *Order Continuing Hearing on Exceptions to Master's Report and on Final Hearing.*

Extract from the Minutes.

April Term, 1910.

NEW ORLEANS, Friday, April 29, 1910.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, District Judge.

(B. R. Div.)

No. 56.

TEXAS &amp; PACIFIC RAILWAY COMPANY

VS.

RAILROAD COMMISSION OF LOUISIANA et al.

By agreement of counsel for the respective parties, it is ordered by the Court that this cause, fixed for hearing this day, be continued



until Friday, May 20th, 1910, at 11 o'clock A. M., to be heard on the exceptions to the master's reports and on final hearing.

*Order Continuing Hearing on Exceptions to Master's Report and on Final Hearing.*

Extract from the Minutes.

April Term, 1910.

NEW ORLEANS, Friday, May 20, 1910.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, District Judge.

No. 56.

(B. R. D.)

TEXAS & PACIFIC RAILWAY CO.

vs.

RAILROAD COMMISSION OF LOUISIANA et als.

On the application of counsel for complainant, counsel for the defendant being present and consenting, it is ordered by the  
302 Court that this cause, fixed for hearing this day, be reassigned for Wednesday, June 1st, 1910, at 11 o'clock a. m., to be heard upon the exceptions to the Master's report and upon final hearing.

*Motion to Dismiss Supplemental Bill.*

Filed May 25th, 1910.

United States Circuit Court, Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division.

No. 56. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY

vs.

RAILROAD COMMISSION OF LOUISIANA et al.

Now comes the plaintiff, The Texas & Pacific Railway Company, and suggests to the Court that the matters complained of in the supplemental bill filed in this cause on the 4th day of December, 1908, have been satisfactorily compromised and adjusted, and petitioner therefore desires to discontinue and dismiss said supplemental bill, reserving, however, all of the rights set forth in the original bill filed herein, and it prays that said supplemental bill may be dismissed.

(Signed)

HOWE, FENNER, SPENCER &  
COCKE, Solicitors for Plaintiff.

*Notice of Filing Motion to Dismiss Supplemental Bill.*

Extract from the Chancery Order Book.

WEDNESDAY, May 25, 1910.

B. R. Div.

No. 56.

TEXAS & PACIFIC RAILWAY COMPANY  
VS.  
RAILROAD COMMISSION OF LOUISIANA et als.

Notice is hereby given that the Texas & Pacific Railway Company, through its solicitors, Howe, Fenner, Spencer & Cocke, has this [day] filed a motion to dismiss supplemental bill herein.

363 *Order Continuing Hearing on Exceptions to Master's Report  
and on Final Hearing.*

Extract from the Minutes.

April Term, 1910.

NEW ORLEANS, Wednesday, June 1, 1910.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, District Judge.

B. R. Div.

No. 56.

TEXAS & PACIFIC RY. Co.  
VS.  
RAILROAD COMMISSION OF LA. et als.

By agreement of counsel for the respective parties, it is ordered by the Court that this cause, fixed for hearing this day, be continued until June 11th, 1910, at 10 o'clock a. m., to be heard upon the exceptions to the Master's report and upon final hearing.

*Hearing, Notes of Evidence, and Submission of Final Hearing.*

Extract from the Minutes.

April Term, 1910.

NEW ORLEANS, Saturday, June 11, 1910.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, District Judge.

R. R. Div.

No. 56.

TEXAS &amp; PACIFIC RAILWAY COMPANY

vs.

RAILROAD COMMISSION OF LOUISIANA et als.

364 This cause came on this day to be heard upon the exceptions filed  
by the defendants to the original and supplemental report  
of Master and for final hearing and upon the pleadings, ex-  
hibits, proofs and testimony.

Present:

Walter Guion, Attorney General, and T. M. Miller, Counsel for  
Exceptors and Defendants.

Chas. P. Fenner, of Counsel, for Complainant in Suit.

Whereupon counsel for complainant offered the following evidence  
in behalf of said complainant:

## 1.

On behalf of complainant:

(a) Exhibits to bill of complaint—"A," "B" and "C."

(b) Master's report and amended report.

(c) Testimony for complainant filed with report of Special Master  
as follows:

First. Deposition of H. L. Redfield, with exhibits annexed thereto.

Second. Deposition of E. N. Tower, with exhibits.

Third. Deposition of C. Ludolph, with exhibits.

Fourth. Deposition of L. S. Thorne, with exhibits.

Fifth. Testimony of W. T. Braggins, with exhibits.

All stipulations filed.

And counsel for defendants offered the following evidence in be-  
half of said defendants:

## 2.

On behalf of defendants.

(a) Answer to bill of complaint.

- 365 (b) Testimony of W. M. Barrow, with exhibits.  
 (c) Testimony of J. C. Hamilton.  
 (d) Testimony of Geo. C. Bradshaw, with exhibits.  
 (e) Testimony of Geo. C. Hauser, with exhibits.  
 (d) Testimony of Wm. C. Ermon, with exhibits.  
 (e) Testimony of Geo. C. Bradshaw (recalled).  
 (f) Testimony of W. M. Barrow (recalled), with exhibits.  
 (g) Testimony of Chas. J. Bachino.  
 (h) Testimony of Charles N. Drown, with exhibits.  
 (i) Testimony of Henry B. Goldsmith, with exhibits.  
 (j) Testimony of W. N. McFarland, Sec'y St. B'd Appraisers.  
 (k) Bulletin No. 16—U. S. Dep't of Agriculture In Re Cost of Cotton Production.  
 (l) 15th Annual Report R. R. Commission of Texas.  
 (m) Report R. R. Commission of Mississippi.
- And the matter was argued by counsel and submitted—when the Court took time to consider.

*Opinion.*

Filed December 5, 1910.

United States Circuit Court, Baton Rouge Division.

TEXAS & PACIFIC RAILWAY COMPANY

VS.

RAILROAD COMMISSION OF LOUISIANA.

In this case the Texas & Pacific Railway Company filed its bill against the Railroad Commission of Louisiana for an injunction to restrain said commission from putting or continuing in force or effect a certain tariff of rates on cotton seed and cotton seed products, promulgated December 13, 1905, and to be effective February 1, 1906, designated as order 484; and also for the cancellation and annulment of said order, on the grounds that said rates are unreasonable and unjust.

In due course the matter was referred to a Master and it is now before me on exceptions to his report.

A mass of testimony and other evidence was offered before the Master and his report shows painstaking care in considering it. He fixes the value of the entire Texas & Pacific system at \$93,385,341.32, based on the amount of mortgage bonds \$54,621,531, and outstanding capital stock \$38,763,810, and he approximates the value per mile at \$50,610.07. He also finds complainant earns about 4 and 6/10 per cent per annum on its total capitalization, and that the proposed rate would reduce complainant's income \$23,775 a year.

From these figures the Master finds the rates complained of to be unreasonable and unjust. The Master also held that the order of the Railroad Commission is entitled to no presumption whatever, but it is not clear what bearing he allowed this to have upon his findings.

The defendants have excepted to the Master's findings and urge

that the complainant has failed to show the cost or value of the particular service in question, and had produced no evidence of its investment in Louisiana. They also contend that the order of the Railroad Commission must be presumed to be valid until the contrary is shown.

It appears that in 1904 complainant raised its rates materially on cotton seed from other points in Louisiana to New Orleans apparently to favor certain interior mills from which it also got the out-haul. It is conceded in argument that the average old rate was 1.50 and the complainant raised it to 3.00, while the schedule adopted by defendant puts it at 1.90.

Complaint was made by certain shippers and the commission instituted an inquiry, extending over a year, and holding several meetings, notifying both railroads and shippers to appear, and giving them ample opportunity to be heard. The commission found the rates of the Texas & Pacific Railway Company to be excessively high, as compared to the rates of other railroads in Louisiana, and in some other states, and in some instances discriminative and unjust, and on December 12, 1905, issued its order, herein complained of.

367 The Railroad Commission of Louisiana is an elective body, created by the Constitution of 1898, and is charged, among other duties, with the fixing of just and reasonable railroad rates. By the same organic law any party aggrieved is given the right to apply to any Court of competent jurisdiction at its domicile, fixed at Baton Rouge, for a revision of the commission's findings. The law creating the Railroad Commission of Louisiana does not, as is the case in some other states, make its findings and orders prima facie valid and correct, but I am convinced that in this case its order 484 is entitled to the presumption that the rates therein fixed are reasonable and fair and that the burden is clearly upon complainant to show to the contrary before it can be accorded the relief it seeks. *M. L. & T. R. R. vs. R. R. Commission of La.*, 18031 Supreme Court of La., decided Nov. 14, 1910. *Cumberland T. & T. Co. vs. R. R. Commission of Louisiana*, 212 U. S. 414.

As I understand the jurisprudence, it is well settled that in the fixing of rates by legislative authority, on a single commodity, the expenses of rendering the particular service must first be considered and the rates so graded as to pay this cost and contribute a just proportion to a fair and reasonable return on the investment.

No effort was made by complainant to show the cost of the particular service in question, to-wit, the movement of cotton seed and cotton seed products. And complainant has also failed to show its investment in Louisiana, except to fix the amount of its outstanding stock and bonds, which should not be taken as conclusive proof. As against this there is evidence tending to show that complainant has constructed a branch railroad in Louisiana from Cypress to Shreveport, a distance of eighty-one miles, at an average cost of \$20,405 per mile; and it is shown that its road is returned for taxation at \$10,000 per mile, for its main line, and \$5,000 per mile for its branches.



I am well aware that in a great many instances it is well nigh impossible to show the cost of service. But on a commodity which moves in large quantities over comparatively short distances every season, and on a railroad as well managed as the Texas & Pacific is shown by the evidence to be, it ought not to be impracticable to do so with reasonable certainty. Nor should it be difficult to show the value of the road's investment in Louisiana.

On the whole, I am convinced complainant has not made out its case and the Master's conclusions are not supported by the evidence. The exceptions to the Master's report will be sustained and the bill dismissed without prejudice.

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*Decree.*

Filed December 7, 1910.

Circuit Court of the United States, Eastern District of Louisiana,  
Baton Rouge Division.

No. 56. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY  
*vs.*  
RAILROAD COMMISSION OF LOUISIANA *et als.*

This cause having come on for hearing upon the exceptions of defendants to the report of the Special Master and by consent of the parties upon final hearing at the last term of this court, and upon bill, answer, exhibits and proofs, and having been taken under advisement after hearing the arguments of counsel; and now the Court being thereof sufficiently advised, for reasons assigned in the opinion filed herein, doth order, adjudge and decree that the exceptions of the defendants to the Special Master's report be, and the same are, hereby sustained and said report set aside.

And the Court doth further order, adjudge and decree that the order of the commission complained of be maintained and complainant's said bill of complainant be, and the same is, hereby dismissed, but without prejudice.

It is further ordered, adjudged and decreed that the complainant pay all the costs of these proceedings to be taxed for which let execution issue as at law.

Ordered, adjudged and decreed this the 7th day of December, 1910.

(Signed)

RUFUS E. FOSTER, *Judge.*

*Petition of Appeal and Assignment of Error.*

Filed December 17th, 1910.

In the United States Circuit Court, Fifth Circuit, Eastern District of Louisiana, Baton Rouge Division. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY, Plaintiff,  
versus

THE RAILROAD COMMISSION OF LOUISIANA, Defendant.

The above named plaintiff, conceiving itself aggrieved by the decree made and entered on the 7th day of December, 1910, in the above entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit.

(Signed) HOWE, FENNER, SPENCER & COCKE,  
*Attorneys for Plaintiff.*

Dated this 17th day of December, A. D. 1910.

The foregoing claim of appeal is allowed, the same to operate as a supersedeas upon plaintiff's furnishing bond with good and solvent surety in the amount of \$500.

(Signed)

RUFUS E. FOSTER,  
*United States Judge.*

Dated this 17th day of December, A. D. 1910.

370 In the United States Circuit Court, Fifth Circuit, Eastern District of Louisiana, Baton Rouge Division. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY, Plaintiff,  
versus

THE RAILROAD COMMISSION OF LOUISIANA, Defendant.

The plaintiff having prayed an appeal from the final decree of this Court to the United States Circuit Court of Appeals, does assign errors as follows, to-wit:

First. That the Court erred in rendering its judgment and decision holding that Order 484 of the Railroad Commission is entitled to the presumption that the rates therein fixed are reasonable and fair, and that the burden is clearly upon the complainant to show to the contrary before it can be accorded the relief it [it] seeks.

Second. The Court erred in holding that the rates as fixed by the defendant were just and reasonable, as the evidence shows that the

rates as fixed by the defendant would cause a great loss in the revenue and earning capacity of the plaintiff and are therefore unjust, unfair, unreasonable and confiscatory.

Third. The Court erred in holding that the plaintiff has not made out its case as the evidence fully justifies the conclusion that the rates as fixed by the defendant are too low to be just, fair and reasonable as based on the evidence showing the cost of building and equipment of plaintiff's road, its cost of maintenance and earning capacity.

Fourth. The Court erred in dismissing complainant's bill.

Wherefore, plaintiff prays that the decree of the Circuit Court be reversed.

(Signed) HOWE, FENNER, SPENCER & COCKE,  
*Attorneys for Plaintiff.*

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*Bond for Appeal.*

Filed December 17th, 1910.

In the United States Circuit Court, Fifth Circuit, Eastern District of Louisiana, Baton Rouge Division. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY, Plaintiff,  
VERSUS

THE RAILROAD COMMISSION OF LOUISIANA et-als., Defendant.

Know all men by these presents, that we, The Texas & Pacific Railway Company, as principal, and Pearl Wight, as surety, are held and firmly bound unto the Railroad Commission of Louisiana in the full and just sum of \$500.00 to be paid unto the said Railroad Commission of Louisiana, its successors or assigns. To which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally by these presents.

Seal with our seals and dated this 16th day of December, 1910.

Whereas, lately at a Circuit Court for the Eastern District of Louisiana, Baton Rouge Division, at New Orleans, in a suit pending between The Texas & Pacific Railway Company, plaintiff, and the Railroad Commission of Louisiana, and the individual members thereof, defendant, a decree was rendered against said The Texas & Pacific Railway Company, and the said Texas & Pacific Railway Company having obtained an appeal to the United States Circuit Court of Appeals and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and citation directed to the said Railroad Commission of Louisiana and the individual members thereof, citing and admonishing the said Railroad Commission of Louisiana to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit to be holden at New Orleans within thirty days.

Now, therefore, the condition of the above obligation is such that if The Texas & Pacific Railway Company shall prosecute said appeal

372 to effect and pay all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and effect.

Signed and sealed in the presence of

B. J. MAYER.

(Signed)

THE TEXAS & PACIFIC RAIL-  
WAY COMPANY,  
By HOWE, FENNER, SPENCE &  
COCKE, *Atty's.*  
PEARL WIGHT.

(Signed)

Witness:

(Signed) B. J. MAYER.

Bond and surety approved.

(Signed)

RUFUS E. FOSTER,  
*United States Judge.*

*Stipulation.*

Filed December 28, 1910.

In the United States Circuit Court, Eastern District of Louisiana,  
Fifth Circuit, Baton Rouge Division. In Equity.

No. 56.

THE TEXAS & PACIFIC RAILWAY COMPANY

vs.

THE RAILROAD COMMISSION OF LOUISIANA.

It is hereby stipulated by and between Howe, Fenner, Spencer & Cocke, solicitors for The Texas & Pacific Railway Company, and Watler Guion, attorney general, of the State of Louisiana, solicitor for the Railroad Commission of Louisiana, that the following documents filed in the record in the above entitled and numbered cause shall be sent up to the Circuit Court of Appeals in the originals and shall not be copied or printed in the transcript, viz:

- (1) Railroad Commissioners' Report of Mississippi, 1903-1905.
- (2) Annual Report of Texas & Pacific Railway Company, 1902, Exhibit 2.
- (3) Annual Report of Texas & Pacific Railway Company, 1903, Exhibit B.
- 373 (4) Annual Report of Texas & Pacific Railway Company 1904, Exhibit C.
- (5) Annual Report of Texas & Pacific Railway Company, 1905, Exhibit D.
- (6) Fifteenth Annual Report of Railroad Commission of Texas, 1906.
- (7) Bulletin No. 16, United States Department of Agriculture, Out of Cotton Production.



- (8) Local Freight Rate Tariff [Tariff] Sheet, L. C. No. 95, Ex. A. to Supplemental Bill
- (9) Joint Freight Tariff on Cotton Seed Oil B. 8070, I. C. R. R. and Y. & M. V. R. R. Co., Ex. Braggins 6.
- (10) Joint through Freight Tariff Sheet T. & P. Ry. Co. No. 233-T. (Ex. D. Y.)
- (11) Arkansas Tariff No. 4-E. Local and joint tariff freight rates (Ex. Braggins 4.)
- (12) Railroad Commission of Texas Com-odity Tariff No. 3-A, applying on cotton seed and cotton seed products. (Ex. 4.)
- (13) Joint Freight Tariff of I. C. R. R. Co. and Y. & M. V. R. R. Co. No. B. 3821. (Ex. Braggins 5.)
- (14) Railroad Commission of Louisiana Map, 1902. (Ex. Braggins 3.)
- (15) Orders No. 400 to 414, inclusive, issued by R. R. Com. of La. (Ex. Braggins 1.)
- (16) Rate sheets under cover, marked Exhibit A.
- (17) Statements of cotton seed product shipments originating on lines in Louisiana in year 1905. (Ex. B.)
- (18) Rate and tariff sheets under cover, marked Exhibit 1-A.
- (19) Rate and tariff sheets under cover, marked Exhibit 1-B.
- (20) Defendant's Exhibits 1-22, inclusive.
- 374 (21) Rate sheet, marked Braggins Ex. 2.
- (Signed) HOWE, FENNER, SPENCER & COCKE,  
*Solicitors for The Texas & Pacific Railway Company.*
- (Signed) WALTER GUION,  
*Att'y General, Solicitor for the Railroad Commission  
of Louisiana.*

*Stipulation.*

Filed January 19th, 1911.

In the United States Circuit Court, Fifth Circuit, Eastern District  
of Louisiana, Baton Rouge Division.

No. 56. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY

VS.

THE RAILROAD COMMISSION OF LOUISIANA et als.

It appearing that the original bill of complaint filed in this cause having been mislaid or lost, and it being necessary that the clerk of court make a copy of said bill of complaint in order to complete the transcript of appeal, and it further appearing that the record in this case contains a printed copy of the bill of complaint which is an exact copy in every respect of the original bill of complaint, it is stipulated and agreed between Howe, Fenner, Spencer & Cocke, solicitors for The Texas & Pacific Railway Company, and Walter Guion, attorney general of the State of Louisiana, solicitor for the



Railroad Commission of Louisiana, that the clerk of court in making up the transcript of record shall use the printed copy of the bill of complaint for all purposes, the same as if it were the original.

New Orleans, January 19th, 1911.

(Signed) HOWE, FENNER, SPENCER & COCKE,

*Solicitors for the Texas and Pacific Railway Company.*

(Signed) WALTER GUION,

*Solicitor for the Railroad Commission of Louisiana.*

United States of America, Circuit Court of the United States,  
Fifth Circuit and Eastern District of Louisiana.

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**CLERK'S OFFICE:**

I, Henry J. Carter, clerk of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, do hereby certify that the foregoing 480 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, and assignment of errors, together with all the evidence adduced on the trial of the case of The Texas and Pacific Railway Company versus The Railroad Commission of Louisiana, No. 56 of the docket of the Baton Rouge Division of said court, except the following evidence, to-wit:

- (1) Railroad Commissioners' Report of Mississippi, 1903-1905.
- (2) Annual Report of Texas & Pacific Railway Company, 1902. Exhibit 2.
- (3) Annual Report of Texas & Pacific Railway Company, 1903. Exhibit B.
- (4) Annual Report of Texas & Pacific Railway Company, 1904. Exhibit C.
- (5) Annual Report of Texas & Pacific Railway Company, 1905. Exhibit D.
- (6) Fifteenth Annual Report of Railroad Commission of Texas, 1906.
- (7) Bulletin No. 16, United States Department of Agriculture, Cost of Cotton Production.
- (8) Local Freight Rate Tariff Sheet, L. C. No. 95. Ex. A to Supplemental Bill.
- (9) Joint Freight Tariff on Cotton Seed Oil B.8070, I. C. R. R. and Y. & M. V. R. R. Co. Ex. Braggins 6.
- (10) Joint Through Freight Tariff Sheet T. & P. Ry. Co. No. 233-T. (Ex. D. Y.)
- (11) Arkansas Tariff No. 4-E. Local and joint tariff Freight rates. (Ex. Braggins 4.)
- (12) Railroad Commission of Texas Commodity Tariff No. 3-A, applying on cotton seed and cotton seed products. (Ex. 4.)
- (13) Joint Freight Tariff of I. C. R. R. Co. and Y. & M. V. R. R. Co. No. B.3821. (Ex. Braggins 5.)
- (14) Railroad Commission of Louisiana Map, 1902. (Ex. Braggins 3.)

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(15) Orders No. 400 to 414, inclusive, issued by R. R. Com. of La. (Ex. Braggins 1.)

(16) Rate sheets under cover, marked Exhibit A.

(17) Statement of cotton seed product shipments originating on lines in Louisiana in year 1905. (Ex. B.)

(18) Rate and tariff sheets under cover, marked Exhibit 1-A.

(19) Rate and tariff sheets under cover, marked Exhibit 1-B.

(20) Defendant's Exhibits 1-22, inclusive.

(21) Rate sheets marked Braggins Ex. 2, which mentioned evidence is transmitted in the originals, with the transcript of appeal, to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with the stipulation of counsel, copied at pages 478-479 of said transcript.

Witness my hand and seal of said court, at the City of New Orleans, Louisiana, this 31st day of January, A. D. 1911.

[SEAL.]

H. J. CARTER, Clerk.

\* \* \* \* \*

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### *Order Designating Judge.*

FEBRUARY 17, 1911.

Ordered, That Honorable William T. Newman, United States District Judge for the Northern District of Georgia, be, and is hereby appointed and designated to act and sit in the hearing and determination of the following causes.

\* \* \* \* \*

TUESDAY, March 7, 1911.

\* \* \* \* \*

No. 2174. The Texas & Pacific Railway Co. vs. The Railroad Commission of Louisiana, et al.

### *Argument and Submission.*

MARCH 8, 1911.

No. 2174.

THE TEXAS & PACIFIC RAILWAY CO.

VS.

THE RAILROAD COMMISSION OF LOUISIANA et al.

On this day this cause was regularly called, and after argument by Chas. Payne Fenner, Esq., for appellant, and T. M. Miller, Esq., and Walter Guion, Esq., for appellee, was submitted to the court.

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*Opinion.*

Filed 22 day of November 1911. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2174.

THE TEXAS & PACIFIC RAILWAY COMPANY, Appellant,

versus

THE RAILROAD COMMISSION OF LOUISIANA et al., Appellees.

In Error to the Circuit Court of the United States for the Eastern District of Louisiana.

Before McCormick and Shelby, Circuit Judges, and Newman, District Judge.

NEWMAN, *District Judge*:

The bill was filed in this case by the Texas & Pacific Railway Company against the Railroad Commission of Louisiana and the members of the Commission, in which it was sought to enjoin the enforcement by the Railroad Commission of what is called "Order No. 484," being an order fixing the rates on cotton-seed and cotton-seed products on the Texas & Pacific Railway in Louisiana.

The order in question is as follows:

The commission having under consideration the record in this case, and after full hearing and investigation, finding the rates on cotton-seed and cotton-seed products on the Texas and Pacific Railway in Louisiana to be excessively high, as compared with the rates on other railways in Louisiana and in other states, and in some instances discriminative and unjust to certain localities, and believing the best interests of the general public will be subserved by the establishment of a uniform mileage rate on the commodities named, it is therefore ordered that the following rates be and are hereby established on cotton-seed and cotton-seed products to be transported between points on the said railway in Louisiana."

Then follow the rates fixed according to mileage.

379 The bill alleges that prior to the passing of Order No. 484 the Railroad Commission had declared the then existing tariff of rates to be fair, just and reasonable.

The bill further alleges that the tariff for the handling of commodities within the State of Louisiana have already been reduced as low as consistent with earning a fair return for the operation of said road, and upon the capital invested in its property, and that the financial and physical conditions are such that it cannot afford to have its revenues reduced any further without seriously impairing the ability of the company to furnish the character of service de-

manded by the public in the operation of its property, and to meet its just fixed charges and operating expenses.

The bill further alleges that the rates fixed by this order of the Railroad Commission are unreasonable and unjust; that the proposed tariff on cotton-seed and cotton-seed products "is unjust and unreasonable in itself and is not justified by any condition either surrounding the movement of said tariff, itself, or by the financial or physical condition" of the Railway Company's property.

There was an answer to the bill in which it is stated that they deny that prior to the time of the filing of Order No. 484 the railway company had in force and effect a tariff of rates on cotton-seed and cotton-seed products moving between points within the State of Louisiana that was just, fair and reasonable, but on the contrary they aver that while said complainant did have, in effect, a tariff of rates on said articles prior to that date which had been filed with the defendant, Railroad Commission, and adopted in the absence of any complaint, the said tariff, as said commission subsequently held, was unjust, unfair, excessive and unreasonable. They deny that they have at any time, as was alleged in the bill, declared the existing tariff of rates before the promulgation of Order No. 484,

to be fair, just and reasonable, so that in dealing with this  
380 question in Order No. 457, while they declined to make any change at that time, they left the question to be determined as it might thereafter arise and as the situation might thereafter exist, and deny that the rates fixed by Order No. 484 are unfair, unjust and unreasonable, or a rate that would not afford to said Railway a reasonable return for the services rendered in transporting said commodities.

The case came to an issue and was referred to a Special Master, who appears to have had full hearings on the question and filed a very complete and elaborate report. The Master reached the following conclusions in the case:

"As I understand the evidence in the record and the law applicable, I am constrained to hold that the tariff of rates which the defendant, Railroad Commission of Louisiana, proposes to establish by its Order 484—attacked in this cause—is not fair and just and reasonable; because:

First. The proposed tariff of rates would reduce the income of the complainant, through, even as it is, the income does not yield a reasonable return on the investment and is otherwise insufficient to enable the complainant to perform fully and completely the duty which the law imposes upon a public carrier.

Second. It imposes a greater charge for a fifty mile haul to a mill, outside of Gretna and New Orleans, than it does for a hundred mile haul to the latter towns.

Third. The flat charge of three (3¢) cents per one hundred (100) pounds—in addition to the regular schedule—which mills, outside of Gretna and New Orleans, must pay, unless they ship a certain amount of product—is grossly excessive when added to the regular rate for distances of five, ten, fifteen miles and other short hauls, as



compared with long hauls, since the per cent. of increase is far greater on the regular rate for short than for the longer hauls.

Fourth. That, without any reason given in the record the tariff discriminates in favor of the mills in New Orleans and Gretna, by relieving them of the additional charge, which it imposes on all other mills, unless they comply with a more or less onerous obligation.

For these reasons and all others given in the body of the report, it is my opinion that the prayer of the complainant should be granted."

There were exceptions to the Master's report and the same were heard in the Circuit Court. The opinion of Judge Foster, who presided in the case, which does not appear to have been reported, is as follows:

In this case the Texas & Pacific Railway Company filed its  
381 bill against the Railroad Commission of Louisiana for an injunction to restrain said commission from putting or continuing in force or effect a certain tariff of rates on cotton seed and cotton seed products, promulgated December 13, 1905, and to be effective February 1, 1906, designated as Order 484; and also for the cancellation and annulment of said order, on the grounds that said rates are unreasonable and unjust.

"In due course the matter was referred to a Master and it is now before me on exceptions to his report.

"A mass of testimony and other evidence was offered before the Master and his report shows painstaking care in considering it. He fixes the value of the entire Texas & Pacific system at \$93,385,341.32, based on the amount of mortgage bonds \$54,621,531, and outstanding capital stock \$38,763,810, and he approximates the value per mile at \$50,610.07. He also finds that complainant earns about 4 and 6/10 per cent per annum on its total capitalization, and that the proposed rate would reduce complainant's income \$23,775 a year.

"From these figures the Master finds the rates complained of to be unreasonable and unjust. The Master also held that the order of the Railroad Commission is entitled to no presumption whatever, but it is not clear what bearing he allowed this to have upon his findings.

"The defendants have excepted to the Master's findings and urge that the complainant has failed to show the cost or value of the particular service in question, and had produced no evidence of its investment in Louisiana. They also contend that the order of the Railroad Commission must be presumed to be valid until the contrary is shown.

"It appears that in 1904 complainant raised its rates materially on cotton seed from other points in Louisiana to New Orleans apparently to favor certain interior mills from which it also got the out-haul. It is conceded in argument that the average old rate was 1.50 and the complainant raised it to 3.00, while the schedule adopted by defendant puts it at 1.90.

"Complaint was made by certain shippers and the commission instituted an inquiry, extending over a year, and holding several meetings, notifying both railroads and shippers to appear, and giving them ample opportunity to be heard. The commission found



the rates of the Texas & Pacific Railway Company to be excessively high, as compared to the rates of other railroads in Louisiana, and in some other states, and in some instances discriminative and unjust, and on December 12, 1905, issued its order, herein complained of.

"The Railroad Commission of Louisiana is an elective body, created by the Constitution of 1898, and is charged, among other duties, with the fixing of just and reasonable railroad rates. By the same organic law any party aggrieved is given the right to apply to any court of competent jurisdiction at its domicile, fixed at Baton Rouge, for a revision of the commission's findings. The law creating the Railroad Commission of Louisiana does not, as is the case in some other states, make its findings and orders *prima facie* valid and correct, but I am convinced that in this case its order 484 is entitled to the presumption that the rates therein fixed are reasonable and fair, and that the burden is clearly upon complainant to show to the contrary before it can be accorded the relief it seeks. *M. L. & T. R. R. vs. R. R. Commission of La.*, 18031 Supreme Court of La., decided November 4, 1910. *Cumberland T. & T. Co. vs. R. R. Commission of Louisiana*, 212 U. S. 414.

"As I understand the jurisprudence, it is well settled that in fixing of rates by legislative authority, on a single commodity, the expenses of rendering the particular service must first be considered and the rates so graded as to pay this cost and contribute a just proportion to a fair and reasonable return on the investment.

"No effort was made by complainant to show the cost of the particular service in question, to-wit, the movement of cotton seed and cotton seed products. And complainant has also failed to  
382 show its investment in Louisiana, except to fix the amount of its outstanding stock and bonds, which should not be taken as conclusive proof. As against this there is evidence tending to show that complainant has constructed a branch railroad in Louisiana from Cypress to Shreveport, a distance of eighty-one miles, at an average cost of \$20,405 per mile; and it is shown that its road is returned for taxes at \$10,000 per mile, for its main line, and \$5,000 per mile for its branches.

"I am well aware that in a great many instances it is well nigh impossible to show the cost of service. But on a commodity which moves in large quantities over comparatively short distances every season, and on a railroad as well managed as the Texas & Pacific is shown by the evidence to be, it ought not to be impracticable to do so with reasonable certainty. Nor should it be difficult to show the value of the road's investment in Louisiana.

"On the whole, I am convinced complainant has not made out its case and the Master's conclusions are not supported by the evidence. The exceptions to the Master's report will be sustained and the bill dismissed without prejudice."

Judge Foster's action in sustaining the exceptions and refusing to sustain the Master's report seems to be based on the following reasons:

First. He found that the Master erred in holding that the order of the Railroad Commission was not entitled to a presumption in

favor if its correctness, and held that the order was entitled to the presumption that the rates therein fixed were reasonable and fair, and that the burden was upon the complainant to show the contrary before it could be afforded the relief sought. In this he was clearly correct. *Cumberland T. & T. Co. v. R. R. Commission of Louisiana*, 212 U. S. 414.

This error of the Master's would, of itself, be sufficient to throw doubt on the correctness of his report. Where the question is as to whether a given tariff of rates is confiscatory, or at least unreasonable and unjust, and the solution depends upon the value of the property, its earning capacity, cost of service, and the like, there would be a very great difference in viewing the case as the Master did, as one without any presumption whatever in its favor, and, on the other hand, as one fixed by a competent constitutional body with power to fix rates and whose action is *prima facie* correct. In *Cumberland T. & T. Co. case*, *supra*, it is held that "rates fixed by a body having jurisdiction, after investigation based on reports of the corporation rendering the service are *prima facie* fair and valid, and the burden of proof is on the complainant that they are confiscatory or unreasonable."

The next ground upon which Judge Foster bases his opinion that the Master's conclusions are incorrect, is the failure of the Railway Company to show, the case being one where rates are fixed on a single commodity, the expense of rendering the particular service, and if the rates fixed are such as to pay the costs of this service and contribute a just proportion to a fair and reasonable return on the investment.

What the Railway Company appears mainly to rely upon as to the loss to it from the Commission's rate on cotton-seed and cotton-seed products is taken from the testimony of H. L. Redfield, who is Assistant General Freight Agent of the Company. The eighth interrogatory to Redfield is as follows:

"State whether or not you have had prepared a comparative statement showing the actual movement of cotton-seed and cotton-seed products under the present tariff of rates and the revenues derived therefrom for the year ending December 31st, 1905, and the reduction that would have been made in said revenue had the commodity moved under the proposed commission tariff which is contested herein? If you state that you have had such a statement made out, then please attach same as a part of your answer to this question, marked Exhibit B; also state fully how said statement is made up and what said statement shows?"

"To the eighth interrogatory the witness answers:

"I have prepared from the records a statement showing the actual movement of the traffic on the rates now in effect; the amount of traffic moved under the rates now in effect for the year ending December 31, 1905, and the actual revenue derived from the movement of the traffic under the present rates, and also the revenue that would have been derived from the movement of the same under the commission's proposed rates. This statement shows that the total number of cars handled was 2,876; weight of commodity 113,593,061 pounds; revenue derived from the actual movement under tariff

\$114,619.47; the revenue that would have been derived under the proposed tariff of the Louisiana Commission, \$90,823.52; difference between revenue that was actually received and revenue under the proposed tariff, \$23,795.95."

There is nothing in this, of course, to show the cost of the particular service. The argument seems to be that applying the per cent. of reduction (20%) made by the Commission order on cotton-seed and cotton-seed products to all the traffic of the Railway Company, it would mean a loss of something over twelve million dollars.

384 Conceding the fact of the twenty per cent. reduction in the income from the special commodity in question here, we do not think that the application to all the traffic, as proposed, is sound. In *Minneapolis v. R. R. Co.* 186 U. S. 257, it is said in the opinion by Mr. Justice Brown:

"In exercising its power of supervising such rates the Commission is not bound to reduce the rate upon all classes of freight, which may perhaps be reasonable, except as applied to a particular article; and if, upon examining the tariffs of a certain road, the Commission is of opinion that the rate upon a particular article, or class of freight, is disproportionately or unreasonably high, it may reduce such rate, notwithstanding that it may be impossible for the company to determine with mathematical accuracy the cost of transportation of that particular article as distinguished from all others. Obviously such a reduction could not be shown to be unreasonable simply by proving that, if applied to all classes of freight, it would result in an unreasonably low rate."

The further reason we understand to control the Judge presiding in the Circuit Court in this case is the failure to show satisfactorily the real value of its property in Louisiana. The Judge, speaking of the Master's report, says:

"He fixes the value of the entire Texas & Pacific system at \$93,385,341.32, based on the amount of mortgage bonds \$54,621,531, and outstanding capital stock \$38,763,810 and he approximates the value per mile at \$50,610.07."

He also says: that:

"Complainant has also failed to show its investment in Louisiana, except to fix the amount of its outstanding stock and bonds, which should not be taken as conclusive proof. As against this there is evidence tending to show that complainant has constructed a branch railroad in Louisiana from Cypress to Shreveport, a distance of eighty-one miles, at an average cost of \$20,405 per mile; and it is shown that its road is returned for taxation at \$10,000 per mile, for its main line and \$5,000 per mile for its branches."

That the Judge is right in holding that this is not a satisfactory way to reach the true value of railroad property seems to us clear. In *Smyth v. Ames*, 169 U. S. 466, in the opinion by Mr. Justice Harlan (p. 546) the proper way of reaching the value of the property is stated as follows:

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And

in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the Company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth".

The Master found the value of the entire railroad to be \$93,385,-341.32, this estimate of the value of the railroad being based, as has been stated, on the amount of outstanding stock and bonds. Clearly this method of reaching the value of the railroad was unsatisfactory and does not comply with the rule laid down in *Smyth v. Ames*, *supra*.

We think it unnecessary to consider some other questions discussed in the case because the judgment of the Circuit Court was evidently based upon the matters which have been referred to above, that is (1) the manifest error of the Master in failing to allow any presumption in favor of the correctness of the Commission's action, (2) the failure on the part of the Railway Company to show the cost of service in handling the particular commodity involved here, and (3) the action of the Master in basing the value of the Railway Company's property in Louisiana on the amount of stock and bonds outstanding and therein failing to comply with the rule announced by the Supreme Court as to what should be considered in reaching the fair value of railroad property.

The first and third grounds just stated, upon which the Court based its conclusion, are clearly correct, even if the second be somewhat doubtful on account of the difficulty of showing the cost of service as to a particular commodity.

This justified the Court in refusing to confirm the Master's report, unless that report be so clearly correct that it should be sustained notwithstanding the errors of law just mentioned. We do not consider it. On the contrary, starting out with a presumption in favor of the correctness of the commission's action, we think the evidence wholly insufficient to overcome this presumption and to show clearly and satisfactorily that the rates fixed would be confiscatory or even unjust and unreasonable.

The judgment of the Circuit Court in this case is right and the same is

**Affirmed.**



No. 2174.

THE TEXAS & PACIFIC RAILWAY COMPANY  
 VS.  
 THE RAILROAD COMMISSION OF LOUISIANA et al.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged and decreed by this court that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed.

It is further ordered, adjudged and decreed that the appellant, The Texas & Pacific Railway Company, and the surety on the appeal bond herein, Pearl Wight, be condemned, in solido, to pay the costs of this cause in this court, for which execution may be issued out of said Circuit Court.

Nov. 22, 1911.

*Petition for Appeal and Order Allowing.*

No. 2174.

United States Circuit Court of Appeals, Fifth Circuit.

THE TEXAS & PACIFIC RAILWAY COMPANY, Appellant,  
 VERSUS  
 THE RAILROAD COMMISSION OF LOUISIANA et als., Appellees.

388 The above named appellant, The Texas & Pacific Railway Company, conceiving itself aggrieved by the decree entered herein by the Circuit Court of Appeals on the 22nd day of November, 1911, in the above entitled suit, does hereby appeal from said decree to the Supreme Court of the United States, and appellant prays that its appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, be sent to the Supreme Court of the United States.

HOWE, FENNER, SPENCER & COCKE,  
 B. J. MAYER, Solicitors for Appellant.

Dated this 18th day of January, A. D. 1912.

The foregoing claim of appeal is allowed, the same to operate as a supersedeas upon appellants furnishing bond with good and solvent security in the sum of Five Hundred Dollars (\$500.00).

DON A. PARDEE,  
 Judge of the United States Circuit Court  
 of Appeals, Fifth Circuit.

Dated this 18th day of January, A. D. 1912.



The foregoing has the following indorsements to-wit: No. 2174. United States Circuit Court of Appeals, Fifth Circuit. The Texas & Pacific Railway Co., Appellant, vs. The Railroad Commission of La., Appellees. Petition of Appeal and order allowing.

Howe, Fenner, Spencer & Cocks, Solicitors for Appellant.  
Filed 18th day of January, 1912. F. H. Mortimer, Clerk of the United States Circuit Court of Appeals.

389

*Bond.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 2174.

THE TEXAS & PACIFIC RAILWAY COMPANY, Appellant,  
versus

THE RAILROAD COMMISSION OF LOUISIANA et als., Appellees.

Know all men by these presents: That we, The Texas & Pacific Railway Company, as principal, and Charles Godechaux of the City of New Orleans, as surety, are held and firmly bound unto the above named, the Railroad Commission of Louisiana, in the sum of Five Hundred Dollars (\$500) to be paid to the Railroad Commission of Louisiana, its certain attorneys, executors, administrators or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 18th day of January, in the year 1912.

Whereas, lately at a term of the United States Circuit Court, for the Eastern District of Louisiana, at the November Term, 1910, in a suit pending in said court between The Texas & Pacific Railway Company, plaintiff, and The Railroad Commission of Louisiana and the individual members thereof, respondents, a decree was rendered against The Texas & Pacific Railway Company, dismissing its bills;  
and

389 Whereas, the said The Texas & Pacific Railway Company duly obtained an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, which Court on the 22nd day of November, 1911, rendered a decree affirming said decree in all particulars; and the said The Texas & Pacific Railway Company having applied for an appeal to the Supreme Court of the United States, and having obtained an order of appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Railroad Commission of Louisiana and the individual members thereof, citing and admonishing it and them to be and appear at the Supreme Court of the United States at Washington within thirty days from the date thereof;

Now, therefore, the condition of the above obligation is such that

if the said The Texas & Pacific Railway Company shall prosecute its appeal to effect and answer all damages and costs if it fail to make this plea good, then the above obligation to be void; else to remain in full force and effect.

THE TEXAS & PACIFIC RAILWAY  
COMPANY,  
By THOMAS J. FREEMAN,  
*First Vice-President.*  
CHARLES GODCHAUX, *Surety.*

Sealed and delivered in the presence of  
B. J. MAYER.

Approved and to operate as a supersedeas.  
DON A. PARDEE,  
*Judge of the United States Circuit Court  
of Appeals, Fifth Circuit.*

Dated this 18 day of January, 1912.

The foregoing has the following indorsements to-wit: No. 2174  
United States Circuit Court of Appeals, Fifth Circuit. The Texas &  
Pacific Railway Co., Appellant, vs. The Railroad Commission  
391 of La., Appellees. Bond. Filed 18th day of January, 1912.  
F. H. Mortimer, Clerk of the United States Circuit Court of  
Appeals. Howe, Fenner, Spencer & Cocks, Solicitors for Appellant.

#### *Assignment of Errors.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 2174.

THE TEXAS & PACIFIC RAILWAY COMPANY, Appellant,  
versus  
THE RAILROAD COMMISSION OF LOUISIANA et als., Appellees.

The appellant having prayed an appeal from the final decree of the Circuit Court of Appeals, for the Fifth Circuit, to the Supreme Court of the United States, does assign errors as follows:

First. That the Court erred in rendering its judgment and decision holding that Order 484 of the Railroad Commission is entitled to the presumption that the rates therein fixed are reasonable and fair, and that the burden is clearly upon the complainant to show to the contrary before it can be accorded the relief it seeks.

Second. The Court erred in holding that the rates as fixed by the defendant were just and reasonable, as the evidence shows that the rates as fixed by the defendant would cause a great loss in the revenue and earning capacity of the plaintiff and are therefore unjust, unfair, unreasonable and confiscatory.

392 Third. The Court erred in holding that the plaintiff has not made out its case as the evidence fully justifies the con-

decision that the rates as fixed by the defendant are too low to be just, fair and reasonable as based on the evidence showing the cost of building and equipment of plaintiff's road, its cost of maintenance and earning capacity.

Fourth. The Court erred in dismissing complainant's bill.

Wherefore, appellant prays that the decree of the Circuit Court of Appeals be reversed.

HOWE, FENNER, SPENCER & COCKE,  
B. J. MAYER,,

*Solicitors for Appellant.*

The foregoing has the following indorsements to-wit: No. 2174. The Texas & Pacific Railway Company vs. The Railroad Commission of La. Assignment of Errors.

Filed 18th day of January, 1912. F. H. Mortimer, Clerk of the United States Circuit Court of Appeals.

393 UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

The President of the United States to The Railroad Commission of Louisiana, and the individual members thereof, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, D. C., within thirty days after the date hereof, pursuant to a petition and order of appeal filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in a suit wherein The Texas & Pacific Railway Company is the appellant and The Railroad Commission of Louisiana is appellee, to show cause, if any there be, why the decree rendered against the said appellant as in said petition for an appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 18th day of January, in the year one thousand nine hundred and twelve.

DON A. PARDEE,  
*Judge of the United States Circuit  
Court of Appeals, Fifth Circuit.*

Service of citation accepted for the Railroad Commission of Louisiana and the individual members thereof without prejudice and with full reservation of all legal objections, exceptions and rights.

WALTER GUION,  
*Attorney General of Louisiana.*

New Orleans, Jany. 19th, 1912.

[Endorsed:] No. 2174. The Texas & Pacific Railway Co. vs. The Railroad Commission of Louisiana et al. Citation and acceptance of service. Filed 19th day of January, 1912. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

## United States Circuit Court of Appeals.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the 17 pages next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the court (except the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana) in a certain cause in said court, numbered 2174, wherein The Texas & Pacific Railway Company is appellant, and The Railroad Commission of Louisiana et al. are appellees, as full, true and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 22nd day of January, A. D. 1912.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,

*Clerk of the United States Circuit Court of Appeals.*

395 In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 2174.

THE TEXAS & PACIFIC RAILWAY COMPANY, Appellant,  
VS.

THE RAILROAD COMMISSION OF LOUISIANA et al., Appellees.

Your petitioner the Texas and Pacific Railway Company respectfully represents.

That having prayed and an appeal having been allowed by this Honorable Court to the Supreme Court of the United States returnable within thirty days from the 18th day of January 1912 and certain original papers as set out in page-375-6 of the transcript of the record in this case being necessary for the inspection of the Supreme Court of the United States on appeal prays that this Honorable Court order that the Clerk of the United States Circuit Court of Appeals transfer the said original documents as set out on page-375-6 of the transcript to the Clerk of the United States Supreme Court in connection with the original transcript and transcript of proceedings in this Honorable Court.

HOWE, FENNER, SPENCER & COCKE,  
B. J. MAYER,

*Solicitors for Appellant.*



*Order.*

The foregoing prayer is allowed and the Clerk of the United States Circuit Court of Appeals is hereby ordered to transfer all of the original papers and documents filed in his office and not copied in the transcript of the record as shown by the stipulation on page 375-6 of the transcript.

DON A. PARDEE,

*Judge U. S. Circuit Court of Appeals.*

February 2, 1912.

The foregoing has the following endorsements, to-wit: No. 2174. The Texas & Pacific Ry. Co. vs. The Railroad Commission of La. et al. Petition and order to send up original documents. U. S. Circuit Court of Appeals. Filed Feb. 2, 1912. Frank H. Mortimer, Clerk.

306 United States Circuit Court of Appeals for the Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing 1 page, numbered from — to —, inclusive, contain a true copy of the petition and order to send up original documents in the case of The Texas & Pacific Railway Company versus The Railroad Commission of Louisiana et al., No. 2174, as the same remains upon the files and records of said United States Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 3rd day of February, A. D. 1912.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,

*Clerk of the United States Circuit Court  
of Appeals for the Fifth Circuit.*

307 [Endorsed:] In the United States Circuit Court of Appeals, Fifth Circuit. No. 2174. The Texas & Pacific Ry. Co. vs. The Railroad Commission of Louisiana et al. (Copy of Petition and Order to send up original documents.)

Endorsed on cover: File No. 23,049. U. S. Circuit Court Appeals, 5th Circuit. Term No. 188. The Texas & Pacific Railway Company, appellant, vs. The Railroad Commission of Louisiana and the individual members thereof. Filed February 8th, 1912. File No. 23,049.





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**IN THE**  
**Supreme Court of the United States**

**October Term, 1913.**

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**No. 186.**

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**THE TEXAS & PACIFIC RAILWAY COMPANY,**  
**APPELLANT,**

**VERSUS**

**THE RAILROAD COMMISSION OF LOUISIANA,**  
**ET AL, APPELLEES.**

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**Appeal From the United States Circuit Court of Appeals,**  
**Fifth Circuit.**

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**Brief and Argument on Behalf of the Texas & Pacific**  
**Railway Company.**

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**STATEMENT OF CASE.**

**This suit was instituted by the Texas & Pacific Rail-**  
**way Company to enjoin the enforcement of an order of**



the Railroad Commission of Louisiana fixing a tariff of rates and charges for the transportation of cottonseed and cottonseed products from and to points within the State of Louisiana, and to have said order canceled and declared null, void and of no effect.

The suit is based upon Article 285 of the Constitution of the State of Louisiana, providing, among other things,

"that if any railroad, express, telephone, telegraph, steamboat, or other water craft, or sleeping car company, or any other party in interest, be dissatisfied with the decision or fixing of any rate, classification, rules, charges, order, act or regulation adopted by the Commission, such party may file a petition setting forth the cause of objection to such acts, rule, rate, charge, classification or order, or to either or all of them, in a Court of competent jurisdiction at the domicile of the Commission, against the said Commission as defendant."

The order, No. 484, of the said Railroad Commission in question, fixing a tariff of rates on cottonseed and cottonseed products from and to points in the State of Louisiana is attacked upon the ground that under the said tariff the complainant will be required to handle and move the commodities in question at an unreasonable, unjust and unremunerative rate and at a rate that will not afford to complainant a reasonable return for the services rendered in transporting said commodities.

Attention is called to the fact that this suit attacks the reasonableness of a rate upon a single commodity, and is not an attack on the entire body of rates promulgated by the Railroad Commission of Louisiana, nor is



it an attack upon any rate, rule, regulation or law fixing maximum rates on classes or commodities moving in the State of Louisiana.

The defendant answered in this cause, averring in effect that the rates proposed by the order of the Railroad Commission of Louisiana in question were just and reasonable.

The case was referred by the Circuit Court to Mr. Solomon Wolff, Esq., of the New Orleans bar, as Special Master, with directions to hear evidence and report to the Court his findings of fact and law.

After a full hearing before the Master he made an elaborate report in which he recommended that the prayer of the complainant be granted.

Upon exceptions filed by the defendant to this report the Court rendered a decree adjudging that the exceptions filed by the defendant to the Master's report be sustained; that the said report be set aside; that the order of the Commission complained of be maintained, and that complainant's bill be dismissed without prejudice; from this decree, an appeal was taken to the Circuit Court of Appeals, Fifth Circuit, which Court on the 22nd day of November, 1911, affirmed the judgment of the Court below, and from this decree this appeal was perfected.

### **SPECIFICATIONS OF ERROR.**

The appellant, the Texas & Pacific Railway Company, complains that the said decree of the Circuit Court of Appeals, Fifth Circuit, is erroneous and assigns the following errors:

First. That the Court erred in rendering its judgment and decision holding that Order 484 of the Railroad Commission is entitled to the presumption that the rates therein fixed are reasonable and fair, and that the burden is clearly upon the complainant to show to the contrary before it can be accorded the relief it seeks.

Second. The Court erred in holding that the rates as fixed by the defendant were just and reasonable, as the evidence shows that the rates as fixed by the defendant would cause a great loss in the revenue and earning capacity of the plaintiff, and are, therefore, unjust, unfair, unreasonable and confiscatory.

Third. The Court erred in holding that the plaintiff has not made out its case as the evidence fully justifies the conclusion that the rates as fixed by the defendant are too low to be just, fair and reasonable, as based on the evidence showing the cost of building and equipment of plaintiff's road, its cost of maintenance and earning capacity.

Fourth. The Court erred in dismissing complainant's bill.

The second, third and fourth assignment of errors will be considered first and will be treated as one assignment of error, as they, in effect, cover the same proposition. These assignments are as follows:

Second. The Court erred in holding that the rates as fixed by the defendant were just and reasonable, as the evidence shows that the rates as fixed by the defendant would cause a great loss in the revenues and earning capacity of the plaintiffs, and, are, therefore, unjust, unfair and unreasonable and confiscatory.

Third. The Court erred in holding that the plaintiff has not made out its case, as the evidence fully justifies the conclusion that the rates as fixed by the defendant are too low to be just, fair and reasonable, as based on the evidence showing the cost of building and equipment of plaintiff's road, its cost of maintenance and earning capacity.

Fourth. The Court erred in dismissing complainant's bill.

In order that the Court may correctly understand the questions involved in this case and fully understand the conditions which resulted in Orders 484 and 489 of the Railroad Commission of Louisiana (Order 489 affirming Order 484), we will summarize the facts and present to this Court a review of the orders or acts of the Commission which led up to the making of the Orders 484 and 489 which are attacked in this cause.

Prior to the 15th day of December, 1904, rates on cottonseed and cottonseed products had been in existence in the State of Louisiana for quite a time. (See testimony of H. L. Redfield, Rec., p. 60.)

On the 15th day of December, 1904, the Railroad Commission of Louisiana issued its Order No. 406, in the matter of the "Standard Cotton Seed Oil Company, Limited, v. The Texas and Pacific Railway Company, et al." This order is as follows:

"On September 23rd, 1904, the 'Standard Cotton Seed Oil Company, Limited,' of New Orleans, filed with the Commission a petition making complaint against various cottonseed rates from

points in the State of Louisiana to the City of New Orleans, alleging discriminations in the rates complained of, and declaring the same to be arbitrary, unjust, unreasonable, and far in excess of what ought to be charged for the service rendered."

"The Commission was asked to revise and readjust the rate on cottonseed as to provide for just and reasonable charges for the transportation of cottonseed from producing points in the State of Louisiana to the City of New Orleans.

"A special hearing was granted in this case at New Orleans on October 5, 1904, and the hearing was continued on the 6th, and concluded on the 7th of that month. At the hearing testimony of many witnesses was taken and a great amount of documentary evidence submitted.

"The Commission has carefully considered the record in this case. There appears to be some necessity for a change in some of the rates now being charged in the State, especially the maximum rates for long distances, these being the rates which are of most importance to the oil mills located in the City of New Orleans.

"The present adjustment of rates in the State is such that each oil mill enjoys rates which do not vary widely from points located similar distances from each mill.

"The Commission believes that the most equitable adjustment of this question will be the establishment of uniform mileage rates, with a maximum rate of 15 cents per 100 pounds.

"It is, therefore, decided that a tariff of mileage rates on cottonseed will be prepared by the Commission at once, and all the interests in the State will be granted a hearing on this proposed tariff at a subsequent session of the Commission, and it is so ordered."



As outlined in the foregoing order, the Commission issued its Circular No. 118, proposing a tariff of rates substantially like the one attacked in this suit. (See deposition of Mr. Braggins, p. 96-97 of Record, answer to Q. 12; answer to Q. 13.)

On the 22nd day of May, 1905, the Commission at a general meeting heard all parties who presented themselves on the rates proposed in Circular No. 118 (which is substantially Order 484), and on July 11th, 1905, issued its Order No. 457, which reads as follows:

**"Order No. 457: Railroad Commission of Louisiana v. Railroads Operating in Louisiana.**

Circular No. 118. Heard May 22, 1905. Decided July 11, 1905. Rates on Cottonseed and Cottonseed Products.

"This proceeding was instituted by the Commission as the result of their decision (Order No. 406) in the case of the 'Standard Cottonseed Oil Company, Limited, et als, v. The Texas & Pacific Railway Company, et als,' rendered November 15, 1904, when there appeared to be a necessity for the adoption of uniform mileage rates for the transportation of cottonseed products between points in Louisiana.

"Accordingly, a general circular was issued by the Commission, copies of which were sent to all cottonseed oil mills in the State, all railroad companies operating in Louisiana, and to all planters' associations. The widest possible publicity was also given to the circular through the medium of the press. The circular fixed a date for the hearing, and named a tariff of mileage rates, both for



the transportation of cottonseed and cottonseed products, and invited all parties interested to be present and present their views on the subject to the Commission.

"The hearing was held at Baton Rouge, Louisiana, on May 22, 1905, and was more largely attended than any hearing ever held by the Commission. Mill men, planters' associations, cotton growers and railroads were represented. The fullest opportunity was given to each party present to discuss the rates proposed by the Commission.

"The principal contention made by the New Orleans mills was that the present rates were unreasonable in themselves and excessive, especially for the long hauls, and, therefore, should be reduced, claiming, also, that under the existing adjustment of rates, the mills situated in the City of New Orleans were at a disadvantage in the territory adjacent to country mills, by reason of the lower rates enjoyed by such mills.

"On the other hand, the country millers, without exception, contended that, even with the present adjustment of rates, New Orleans mills had an advantage over them in rates on fuel and materials used in the manufacture of the products of cottonseed, and by reason of the rates on products which the country mills had to pay to the markets—New Orleans being one of the primary markets and principal export points for the products of cottonseed. The cottonseed producers desired the present conditions to remain unchanged and requested the Commission not to adopt the rates proposed by them.

"The question involved in this case is one of too great importance to be disposed of without the most careful consideration and upon the fullest information. The interest of all parties must be properly weighed and adjusted. The testimony has been full, and the Commission's examination of the facts has been exhaustive. No one, save the New Orleans mills, are complaining of present conditions, and no one appears to be injured by the rates as they are now adjusted. The character of a rate on any staple product must be expansive and flexible. There may arise cases where an adjustment of rates on any railroad may become necessary at any time. The Commission does not pretend to say that such cases does not exist, but, in the present instance, the only matter which is before the Commission for consideration is the adoption of a uniform mileage tariff to apply on cottonseed and cottonseed products.

"The record in this case does not develop a sufficient reason for the adoption of rates proposed in Circular No. 118. After the most careful deliberation the Commission has reached the conclusion that the adoption of the proposed rates would seriously disorganize the industries involved, and would not result in particular benefit to any of those interested.

"The Commission further considers that complaints against rates from or to any locality should be adjusted as they arise, believing such procedure to be far more satisfactory than to attempt, on account of occasional irregularities in rates on these products, to readjust the traffic, commercial and economic conditions of the entire State.

"It is, therefore, ordered, that the case be, and is hereby, dismissed."

After handing down this carefully considered and most carefully worded order, the Commission on the 9th day of November, 1905, in the matter of Longbridge Cotton Oil Co. v. Texas & Pacific Railway Company, again considered the subject, and on the 12th day of December, 1905, issued its Order No. 484, which subsequently was affirmed by Order No. 489, and which order was attacked in this suit, and which order reads as follows:

"Mileage Rates on Cottonseed and Cottonseed Products. Heard November 9th, 1905. December 12th, 1905.

"The Commission having under consideration the record in this case, and after full hearing and investigation, finding the rates on cottonseed and cottonseed products on the Texas & Pacific Railway in Louisiana to be excessively high, as compared with the rates on other railways in Louisiana, and in other States, and in some instances discriminative and unjust to certain localities, and believing the best interests of the general public will be subserved by the establishment of a uniform mileage rate on the commodities named, it is, therefore, ordered that the following rates be, and are hereby, established on cottonseed and cottonseed products to be transported between points on the said railway in Louisiana:

	Cotton seed, carloads, min. wt. 24,000 lbs.	All Cotton seed products except oil and lard bottles, min. wt. 24,000 lbs.	Oil and lard bottles min. wt. in bbls. 30,000 lbs. in tank, 24,000 lbs.
10 miles and less.....	3.	3.	4.
20 miles and over 10.....	4.	3.5	5.
30 miles and over 20.....	4.5	3.75	6.
40 miles and over 30.....	5.	4.	7.
50 miles and over 40.....	6.	4.25	7.5
60 miles and over 50.....	7.	4.5	8.
70 miles and over 60.....	7.5	4.75	8.5
80 miles and over 70.....	7.5	5.	9.
90 miles and over 80.....	8.	5.25	9.5
100 miles and over 90.....	8.5	5.5	10.
110 miles and over 100.....	9.	5.75	10.5
120 miles and over 110.....	9.	6.	11.
130 miles and over 120.....	9.5	6.5	11.5
140 miles and over 130.....	9.5	6.5	12.
150 miles and over 140.....	10	6.75	12.5
160 miles and over 150.....	11	7.	13.
170 miles and over 160.....	12	7.25	13.5
180 miles and over 170.....	13	7.5	14.
190 miles and over 180.....	14	7.75	14.5
200 miles and over 190.....	14.5	8.	15.
210 miles and over 200.....	15	8.	15.5
225 miles and over 210.....	15	8.	16.
Over 225 miles .....	15	8.	17.

"The rates proposed will apply as follows:

"On cottonseed, straight carloads.

"On cottonseed cake and meal, straight or  
mixed carloads.



"On cottonseed ashes, straight carloads.

"On cottonseed hulls, straight carloads.

"On cottonseed oil and tank bottoms, in barrels, straight or mixed carloads.

"All rates previously in effect on cottonseed and cottonseed products between points on the Texas & Pacific Railway in Louisiana are hereby canceled.

"The above rates on cottonseed will apply when fifty (50%) per cent. of the products of the seed hauled in, other than linters, hulls and ashes, or as shipped out via the 'Texas & Pacific Railway.' Otherwise, the rates on cottonseed will be three cents per one hundred (100) pounds higher. This applies except on seed shipped into New Orleans or Gretna."

The only difference between the rates proposed in Circular 118 and those established in the foregoing order, is the last sentence, which excepts New Orleans and Gretna from the operation of the last clause. That is, the mills in New Orleans and Gretna did not have to pay three (3c) per one hundred (100) pounds more for seed than the fixed rates, although (50%) per cent. of the product was not shipped on the complainant road, while the country mills did have to pay the extra three (3c) cents per one hundred (100) pounds, unless fifty (50%) per cent. of the product was shipped.

The purpose of setting forth the respective orders of the Railroad Commission of Louisiana is to call the Court's attention to the positive expression of the Rail-



road Commission of Louisiana made in its first order, as follows:

"The question involved in this case is one of too great importance to be disposed of without the most careful consideration and upon the fullest information. The interests of all parties must be properly weighed and adjusted. The testimony has been full, and the Commission's examination of the facts has been exclusive. No one, save the New Orleans mills are complaining of present conditions, and no one appears to be injured by the rates as they are now adjusted. The character of a rate on any staple product must be expansive and flexible. There may arise cases where an adjustment of rates on any railroad may become necessary at any time. The Commission does not pretend to say that such cases do not exist; but, in the present instance, the only matter which is before the Commission for consideration is the adoption of a uniform mileage tariff to apply on cottonseed and cottonseed products.

"The record in this case does not develop a sufficient reason for the adoption of the rates proposed in Circular No. 118. After the most careful deliberation the Commission has reached the conclusion that the adoption of the proposed rates would seriously disorganize the industries involved, and would not result in particular benefit to any of those interested.

"The Commission further considers that complaints against the rates from or to any locality should be adjusted as they arise, believing such a procedure to be far more satisfactory than to attempt, on account of occasional regularities in rates on these products, to readjust the traffic,

commercial and economic conditions of the entire State."

We further respectfully call attention to the statement, among others contained in the above order, to the effect:

"The testimony has been full, and no one save the New Orleans mills are complaining of present conditions, and no one appears to be injured by the rates as they are now adjusted."

And the Court's attention is directed to the fact that the first of these orders was made on the 11th day of July, 1905, and the second of these orders, No. 484, which is complained of herein, was made on the 9th day of November, 1905; and that by uncontradicted testimony it has been shown that no change had taken place in existing conditions between the date of the first order and the date of the second order. (See testimony of Mr. Braggins, Rec., pp. 97-99.)

This case belongs to the category of causes that must be tried and determined upon the facts peculiar to it.

The order of the Commission, No. 484, which is attacked, is not operative upon all local rates, but only attempts to fix the rate on a single article—cottonseed and its products.

It is admitted, or at least not controverted, that the complainant herein has the legal right to attack any rate, rule or regulation of the Railroad Commission of Louisiana, whether or not that rate, rule or regulation affects one commodity or many commodities.

In the case at bar the rate or order attacked only affects one commodity; and we respectfully submit that

in determining the question as to whether or not the rate or order upon one commodity is reasonable or unreasonable; that the peculiar facts surrounding the movement of that commodity must be considered, and that the rule that would apply where the entire blanket rate sheet was attacked, or where a maximum rate law was attacked, would not be applied in the same degree in the case of an order applicable alone to the movement of a single commodity.

This Court has recognized the fact of the extreme difficulty of determining whether or not a rate or order affecting one commodity is reasonable or unreasonable.

In the case of *Atlantic Coast Line Railroad Company v. Florida*, 203 United States Supreme Court Reports, p. 260, which was a case almost in point with the case at bar, in that it was a rate on a single article that was attacked, the Supreme Court says:

"And here we face the situation: The order of the Commission was not operative upon all local rates; but only fixed the rate on a single article, to-wit, phosphate. There is no evidence of the amount of phosphates carried locally; either is it shown how much a change in the rate of carrying them will affect the income, nor how much the rate fixed by the railroad for carrying phosphate has been changed by the Commission. There is testimony to show the gross income from all local freights and the value of the railroad property, and also certain difficulties in the way of transporting phosphates owing to the lack of facilities at the terminals; but there is nothing from which we can determine the cost of such transportation. We are aware of the difficulty which at

tends proof of the cost of transporting a single article, and, in order to determine the reasonableness of the rate prescribed, it may sometimes be necessary to accept as a basis the average rate of all transportation per ton per mile. We shall not attempt to indicate to what extent or in what cases the inquiry must be special and limited."

The Court has fully recognized the difficulty of establishing the reasonableness or unreasonableness of an order on a single commodity; but it also fully recognizes the fact that the reasonableness or unreasonableness of a rate upon a single commodity may be attacked for unreasonableness, and that the facts peculiar to that particular commodity and the reasons for making that particular rate may be examined into in determining the reasonableness of the order itself. It is unquestioned that an order of the Railroad Commission of Louisiana, operative alone upon one single article, may be attacked for unreasonableness; as this right is expressly given by Article 285 of the Constitution of Louisiana.

Then, it must follow, as a logical sequence, there being no statutory or constitutional rule as to how the unreasonableness of the order may be determined, that all the facts peculiar to the movement of the commodity affected may be considered in determining whether or not the order is a reasonable one. And all the conditions that lead up to the order may be considered.

The Court affirmed the judgment of the Circuit Court upon three grounds:

First. Error of the Master in failing to allow any presumption in favor of the correctness of the Commission's action.



The assignment of error covering this ground will be discussed later.

Second. The failure upon the part of the Texas & Pacific Railway Company to show the cost of service in handling the particular commodity involved here.

Third. The action of the Master in basing the value of the Texas & Pacific Railway Company's property in Louisiana on the amount of stock and bonds outstanding, and failing to comply with the rule announced by the Supreme Court as to what should be considered in reaching the fair value of the railroad property.

As to the two last grounds, we respectfully submit that the Court erred in its conclusions in both instances, and that its conclusion in both instances are not borne out by the facts shown in record.

It would be a useless consumption of time to enter into a discussion of the various decisions of this Court, and the inferior Federal Courts, upon the question of the rate-making powers of legislative bodies or of agencies called Commissions.

This Court, in what is known as the *Minnesota Rate Case* (page 342 U. S. Sup. Court Rep. 230), has given an exhaustive and masterful resume of all the decisions bearing on the subject—the “yard stick” that measures the right of either legislative bodies or Commissions to make railroad rates, is that of “Reasonableness.” The difficulty is in determining or arriving at the facts that constitute a reasonable rate; a rate that is unreasonable is void in that it deprives a railway of its property without due compensation. We contend that the rate attacked in this case is unreasonable; that is a question of fact!



We say the facts establish its unreasonableness! What are the facts? We submit that the complainant has established the following facts:

**First.** It appears from record that the rates in effect prior to the promulgation of the Railroad Commission's Order No. 484 had been in effect long prior to the date of said order. Mr. H. L. Redfield testified expressly that the rates existing prior to the Commission's Order No. 484 was reasonable and just and that the proposed Commission's rates were unreasonable and unjust. (See deposition of Mr. Redfield, Tr., p. 60.)

Mr. Redfield qualified as an experienced traffic man and goes into a detailed statement as to how he arrives at his conclusion that the rates then in existence were reasonable. He states:

**First.** That the tariff on cottonseed and its products moves readily under the then existing rates and brings a good price to the producer, and also enables the manufacturers to make a profit. (See deposition of Mr. Redfield, Rec., p. 54, 55, 56, 57, 58, 59, 60.)

**Second.** That under the then existing rates local mills have been located at interior points on the line of the Texas & Pacific Railway in the producing territory for the purpose of manufacturing the product. That these industries are prosperous under the rate in existence prior to Order No. 484, and do not need any further reductions; and that the complainant is enabled to get a reasonable return for handling the commodity, based, in one respect, upon the fact that it also gets a long haul on the product, which would not be true under the Commission's proposed rates to New Orleans and Gretna.

That seed moving into New Orleans and Gretna and manufactured there will not return to the railroad any manufactured product whatsoever, but same would be exported. (See testimony of Redfield, Rec., pp. 55, 60.)

Fourth. That the existing rates of proposed Order No. 484 were lower than those of Texas and Oklahoma States where cottonseed is produced in larger quantities than in other States, and one of the States through which the line of the Texas & Pacific Railway runs. (See deposition of Mr. Redfield. Rec., pp. 55-60.)

Fifth. That under the Commission's proposed rates Order No. 484 the interior mills located on the line of the Texas & Pacific would be put out of business by the advantage given the New Orleans mills, thus depriving the Texas & Pacific Railway not only of the revenue from handling the product into these mills and the product out, but also depriving it of the revenue incidental to building up local industries on its line to furnish it a steady and high-class tonnage the entire year. (See deposition of Mr. Redfield. Rec., pp. 55-60.)

That Mr. Redfield was correct in his testimony and in his conclusions is borne out by the fact that the rates in existence prior to Order No. 484 had been in effect for years, and business had adapted itself to them; and the Railroad Commission of Louisiana, after a full hearing and within a few months of the time when the Order No. 484 was promulgated, had handed down an opinion or order that the existing rates were reasonable and that existing commercial conditions demanded that no changes be made. (See order of Commission in case No. 457. of Rec., pp. 25. 27.) And this order was made at

a hearing called by the Commission itself against all Louisiana lines.

Eighth. The Commission in all prior orders, and even in Order No. 484, as to the country mills, expressly recognized the right of the railway company to move the manufactured product from the mill manufacturing same, and fixes a penalty of three (3c) cents per one hundred (100) pounds higher than the regular tariff rates where less than fifty (50%) per cent. of the product of the seed hauled in, other than linters, hulls and ashes, are shipped out via any other line than the Texas & Pacific, the line hauling the raw product in.

Ninth. In its order No. 484 it excepts from this penalty seed shipped into New Orleans or Gretna; by this exception it recognizes the fact that unless as much as fifty (50%) per cent. of the product is returned to the Texas & Pacific (the company that hauls the raw product in), that a rate of three (3c) cents per one hundred (100) pounds higher than the regular rate would be a reasonable rate and would be charged.

If this is true as to mills, other than the mills at Gretna and New Orleans, it should be equally true as to the mills at Gretna and New Orleans.

In making this exception the Commission were fully aware of the fact that seed hauled into Gretna or New Orleans, when manufactured there, the manufactured product would not be returned to the railway company hauling same in.

Tenth. If any presumption of the reasonableness of the rate promulgated by the Commission should exist, the statement of these facts show conclusively that that presumption is overdrawn. That the Commission have

affirmatively declared, and by a fixed rule still effect, that their own rates in this particular instance, are unreasonable.

Eleventh. Mr. Redfield further testified that the Commission's proposed Order No. 484 makes an average reduction in the revenues of the railroad of more than twenty (20%) per cent., and in some of the hauls the reduction is more than forty-five (45%) per cent., and on the hauls to New Orleans and Gretna a reduction of twenty-five (25%) per cent. taking the business as it actually moved for the year 1905, the year preceding the proposed Order No. 484, the movement for that year being small, as the crops were small. (See deposition of Mr. Redfield, Rec., pp. 54-60.)

Twelfth. The total revenue from hauling cottonseed and products for the year 1905 was \$114,619.47. If it had moved under the Commission's order, it would have been \$90,823.52, a reduction of \$23,795.95, or 20.76 per cent.

Thirteenth. Mr. L. S. Thorne, vice-president and general manager of the Texas & Pacific Railway Company, testified:

That the Texas & Pacific Railway Company has not been extravagantly operated or managed during any part of his administration, covering a period of about fifteen years, and that it has been economically managed in every department; that a comparative statement of its operating expenses, as compared to other lines running through the same territory, will show that it has been more economically managed than any other line of like mileage, that there has not been any extravagance or



needless expenditure of money in its operation or management, nor any waste in the management of its property, nor has there been paid out large sums of money in the way of enormous salaries; that in its construction the road was wisely built, and that its local territory will furnish sufficient business upon reasonable rates to make the property self-sustaining and ultimately a profitable investment.

That the Texas & Pacific Railway Company has no other source than current revenues for obtaining money for improvements and bettering its property and to meet its operating expenses, including fixed charges and taxes.

That the road has barely been enabled to earn a sufficient revenue to meet its fixed interest charge, including taxes, on less than a valuation of \$32,000 per mile, and it has not been enabled to earn a sufficient revenue from the operation of its property to place the necessary betterments and improvements upon its property, either in the way of maintenance or permanent betterments and especially in the way of additional rolling stock generally. It has only been enabled to keep its property in a fair condition for operation, and not in a first-class condition. Most of its line is unballasted, and is in great need of heavy ballast at this time, especially the greater portion of its line in Louisiana. It also is in need of at least five thousand additional box cars at this immediate time, and at least fifty additional engines. It is unable, however, on account of the want of revenue, either to make these improvements or to buy this equipment. (Tr., p. 85 et seq).

He further testified that the Texas & Pacific Railway Company requires over and above its current revenues,



each year, the sum of at least two million dollars to be expended in betterments, permanent improvements and additional expenses in the way of improving its physical condition; and, in addition to this sum, it should have at least one million dollars each year to purchase additional equipment. As to the permanent improvements needed upon the property of the Texas & Pacific Railway Company in Louisiana, it needs permanent improvements and betterments over its entire main line and all of its branch lines, especially in the way of ballasting and widening its roadway and strengthening its bridges, and more than a million dollars could be expended yearly upon its main line and branch lines in the State of Louisiana in addition to what is now being expended, and this amount should be expended in order to put its property in such a physical condition as to render the best service possible to the public. If such improvements are made, they will certainly have to be made out of the current earnings, as the company has no fund upon which it can draw for such improvement.

Mr. Thorne further testified that from the records kept in the auditor's office as to the cost of the construction of the main line of the Texas & Pacific Railway in Louisiana, it cost about the sum of \$50,192.90 per mile, including a portion of the equipment and rolling stock. (See page 89 of Record.) And that the branch lines, aggregating about 325 miles, had cost up to June 30, 1906, \$6,854,319.13. (See page 89 of Record.)

Mr. E. W. Tower testified that the total cost per mile for the construction of the Texas & Pacific Railway up to June 30, 1906, was \$50,610.07 per mile; that this amount was arrived at by taking the total cost of the construc-

tion, including equipment, and dividing it by the number of miles. That his records were not kept in such shape to show the cost of Louisiana separate from that of the entire line. (See page 79 of Record.) He further testified that the amount charged against construction represents money expended, or its equivalent, in property or securities of some kind, but does not include betterments and new equipment charged since June 1, 1888, to improvement account or to new equipment account. He further stated that the outstanding capital stock of the Texas & Pacific Railway Company was \$38,763,810.00, and the amount of outstanding mortgage bonds of the Texas & Pacific Railway Company is \$54,621,531.32. That the outstanding capital stock and bonds represents the amount of money received for same. That in fact the stock was assessed an additional amount of ten (10%) per cent. (See page 79 of Record.)

Mr. Tower also further testified that the percentage of operating expenses to earnings on all business of the Texas & Pacific Railway Company for five years ending December 31, 1905, was 67.50 per cent. (Tr. pp. 74, 75..)

He further testified that the cost of handling local business over and above the cost of through business, after charging all items that can be directly charged to the handling of local business, as compared with the items than can be charged to the cost of handling through business, is established as twice as great. Mr. Tower gives the reason for this. (See page 75 of Record.) He further states that if the Commission's proposed rates had been applied to actual movement of traffic for the year ending December 31, 1905, there would have been a reduction of 20.76 per cent. in revenue. That the reduc-

tion between the rate now in effect on the Texas & Pacific Railway Company on cottonseed and products, and the proposed rates on same commodity, runs as high as forty-seven per cent. and in nearly every instance exceeds thirty per cent.

That applying this percentage of reduction in revenue for the five years ending December 31, 1905, it would mean a loss of \$12,380,417.75; and, if the reduction had been applied to local traffic in Louisiana during same period, the same would have been handled at a loss.

To illustrate: Suppose the Texas & Pacific Railway Company, under the rates now in effect, had earned on the business moving under same for the year ending December 31, 1905, \$1,000,000, of which amount \$677,000 was for operating expenses, and \$323,000 would be left for dividends or to pay fixed charges and taxes. If the proposed rates of the Railroad Commission of Louisiana had been in effect during the same period of time, and applied to the same business, a reduction would have been made in the revenue of \$207,000, leaving a balance of \$115,400, and, estimating that the cost of local traffic over through traffic was only twenty per cent., this would leave a deficit of \$20,000. (See pages 75-6 of Rec.)

And to further illustrate: As stated above, the average operating expenses to earnings for the five years ending December 31, 1905, was 67.7 per cent. Add to this the extra cost of local business, estimated at twenty per cent. which is not more than one-fifth of the actual cost, and the result is that, under the rates during the period stated, the cost of the Texas & Pacific Railway Company to earn \$100 would have been \$81.24. If the proposed rates of

the Louisiana Railroad Commission had been in effect during that time, a reduction of 20.76 per cent. would have been made, leaving the revenue received by the company only \$79.24, as against \$100 for the same service. This shows that during the period named the operating expenses would have exceeded the earnings \$2.00 in every \$100 of the amount actually received by it. (See pages 75-6-7, of Rec.)

It is further shown by Mr. Tower's testimony that the total cost per mile for the construction of the Texas & Pacific Railway Company up to June 30, 1906, was \$50,610.07. This does not include betterments and new equipment charges since June 1, 1888. (Tr., p. 79, et seq.)

The Texas & Pacific Railway Company has never paid any dividends upon its stock, and only within the last few years five per cent. interest on the first and second mortgages, which are less than \$32,000 per mile.

It further appears from Mr. Redfield's testimony that the average carload of cottonseed is 37,190 pounds, and that the average carload of oil and cake and meal is 48,900 pounds, a difference of 11,710 in favor of oil. (See page 68, of Rec.)

Mr. Braggins testified, in substance, that he was familiar with both traffic and rate conditions in Louisiana; that the rates now in effect over the Texas & Pacific Railway Company were reasonable and just, and had builded up the cotton-mill industries on its line in Louisiana; that they were fair to all parties, and permitted its interior mills to retain their natural advantages of location in the producing territory; that the New Orleans mills, on account of being located at the port of export,



also possessed natural advantages over the interior mills; that the proposed Commission rates were unreasonable and unjust both to the railway and the interior mills; that, under the proposed rates, the New Orleans mills, in addition to their natural advantages of location at the port of export, were enabled to deprive the interior mills of the advantage of location, and it would result in closing up the interior mills, and also in depriving the road of its just revenue; that the oil mill industries had prospered under present rates, and commercial conditions had adapted themselves to them. He further shows that this whole matter had been fully investigated by the Commission, and only within a short time prior to issuing their Order 484 they had declined, after a full investigation, to disturb the existing rates, giving as their reason that they were reasonable, and that commercial conditions had grown up under same that should not be disturbed; that no change in conditions had taken place between the date of this order and Order 484. (Tr., pp. 94, 95, et seq.)

We respectfully submit that the testimony of none of these witnesses was contradicted; that the effect of their testimony established the fact that the Commission's proposed rates in Circular 484 was unreasonable; that, at least, said testimony rebutted any presumption of reasonableness that might be given to an order of the Commission, and the burden was shifted to the Commission to show the reasonableness of its order and that it has introduced no testimony showing the reasonableness of its order.

That specific proof as to the cost of the road in Louisiana was made by Mr. Thorne and Mr. Tower, both as to



the cost of the branch lines in Louisiana and the main line in Louisiana.

That specific proof was made as to the outstanding stock and bonds of The Texas & Pacific Railway Company.

That specific proof was made as to the road being economically managed and providently located.

That specific proof was made as to the need of additional revenue, which could only be had from earnings, in order to improve the property and to furnish the service demanded by the public and to which they were entitled.

That none of these issues were met or contradicted by any testimony introduced by the defendant, the Railroad Commission of Louisiana.

We submit to the Court that we have established every fact that the Supreme Court indicated in the case of *Atlantic Coast Line Railroad Company v. Florida*, 203 United States Supreme Court Report, page 260, that should have been established in a case of this nature.

**First.** We have shown that we carried locally for the year 1905, the year preceding the Commission's Circular 484, 56,797 tons of cottonseed and products.

**Second.** That we received for carrying same \$114,619.47.

**Third.** That, if the Commission's proposed rates had been applied to this movement, we would have received \$90,823.52, or a difference of \$23,795.95 less than under existing rates, or a reduction in revenue of about twenty-one per cent.

We further show that the year 1905 was a poor year for seed, as the cotton crop was short; that, with a large crop, our loss would have been proportionately greater. Further, we have shown the income from all freight for a period of five years and the per cent. of operating expenses to earnings, and the fact that local business, such as handling cottonseed, cost twice as much as through business; but that, even estimating the cost of local business, at twenty per cent. greater than through business, this reduction of twenty per cent. in our revenues, if applied to all business, would make the company pay out \$102 for every \$100 it took in. We have further established the fact that for the year ending June 30, 1906, the average rate per ton per mile received from all freight was 991/1000 of a cent; that the rate received during the same period from the transportation of cottonseed and its products was only 86/100 of a cent per ton per mile, or 13/100 of a cent per ton per mile less than the average received from all freight.

We submit we have complied with every suggestion made in the opinion, and every fact established clearly shows the unreasonableness of the proposed rates.

We further established the fact that under the Commission's proposed rates, and under the contention of the New Orleans mills, the railway company will lose the haul on all the product coming to New Orleans and Gretna, and does not get the additional rate of three cents per hundred pounds. Under existing rates the railway hauls the oil to New Orleans, also the meal and cake; the meal and cake amount to about one-half the weight of the seed, and will load about 11,000 pounds more per

car than seed. (See deposition of Mr. Tower, page 81; see deposition of Mr. Braggins, page 94.)

It is further shown that cottonseed and its products have not been bearing an unjust proportion of the rates, for the evidence shows that for the year ending June 30, 1906, the average rate per ton per mile for all freight, entire line, was 991/1000 of a cent, while the rate on all freight in Louisiana, State and interstate, was 1.015 cents. It is also shown that this higher rate in Louisiana was due to short hauls, but it is further shown that for the year 1896 the rate per ton per mile on cottonseed and its products was 1.17 cents per ton per mile; in 1904, 1.15 cents per ton per mile, and for the season ending June 30, 1906, only 86/100 of a cent per ton per mile, or 13/100 of a cent per ton per mile less than the average for all freight handled; and yet, in the face of these facts, the Commission have made a reduction in the rate of from twenty-five to forty-seven per cent.

A great mass of evidence has been taken by the defendant in this cause, much of which, we submit, has no bearing at all upon the issues involved herein. We would call attention, however, to the fact that no member of the Railroad Commission of Louisiana has testified in this cause, nor has any evidence been introduced showing what factors were considered by them in making the reductions proposed in their Order No. 484.

Mr. Barrow, secretary of the Commission, has testified concerning some matters, and expressed his individual opinion upon some matters, but, as his position on the Commission is neither ministerial or judicial, but merely clerical, we submit that his testimony is without weight

as showing the reasons that induced and controlled the proposed reductions made in Circular No. 484. It is a fact that has not been explained by any member of the Commission, nor, in our opinion, can it be explained, that within four months preceding the issuance of Order No. 484, they definitely determined that the rates upon cottonseed and its products were reasonable, fair and just, and no one was hurt by same, and that the only parties complaining were the New Orleans mills. They have not explained in this cause this decree, nor have they introduced any testimony in this case showing why, in the face of such a decree, and without any change in conditions, and without any testimony, reductions in the existing rates of from twenty-five to forty-seven per cent should be made. It is clear that from reading the evidence of the defendant in this case, the moving parties before the Commission were the New Orleans mills, and that the moving parties in this cause are the New Orleans mills. It is further clear that an attack upon the existing rates of the Texas & Pacific Railway Company was not made upon the ground that the rates, themselves, were unreasonable and unjust, but solely upon the ground that, under existing commercial conditions, the interior mills had the advantage over the New Orleans mills, which advantage the New Orleans mills desired taken away from the interior mills by the proposed system of rates embodied in Order No. 484. This is not the first attempt upon the part of the New Orleans industries that had grown up under conditions that existed before the war in the matter of handling cotton and other agricultural products, to attempt to retain and keep in effect



the commercial conditions entirely out of line with the new commercial conditions that have grown up in the South since the war.

It is a matter of common knowledge that prior to the war, and probably for some fifteen years after the war the cotton crop of the southern States was handled by the commission men located at New Orleans, Memphis, Mobile and Savannah, the planter shipping the flat cotton direct to these places to be sold and handled by the commission merchants. This system of handling cotton was found to be very expensive. The process of compressing cotton came into existence, which was an economical process in that it reduced the size of the bale of cotton to be shipped, bringing about a saving both in rail transportation and in water transportation. For a time the cotton from the southern States was concentrated at such points as Memphis, New Orleans, Mobile and Houston for compression. Subsequently, however, compresses were built in the interior of the southern States and in close proximity to the cotton fields, and, instead of it being concentrated at Memphis, New Orleans, Mobile and Savannah, it was concentrated at the interior compresses for compressing and classing. This was more economical from a transportation standpoint and from a commercial standpoint, as the producers of cotton, instead of handling same through a middleman, concentrated their cotton in the interior, and either shipped it or sold it to agents of foreign buyers, thus doing away with the middleman and doing away with the concentration and commercial centers. As in the present case the New Orleans cotton factors and Memphis cotton factors complained of this compression of cotton in the interior, and asserted



that it was a discrimination against them; that as they had heretofore handled the business, they were entitled to still continue to handle it. This is the complaint they are making in this case, and which they made before the Commission at various hearings of the Commission in these matters. The New Orleans and Memphis cotton factors made a complaint before the Interstate Commerce Commission and sought to re-establish old conditions. They complained of the system called "floating cotton," which is nothing more than concentrating at the interior compresses for compression. The matter was heard by the Interstate Commerce Commission (see *Interstate Commerce Commission Reports*, Vol. 8, p. 121) and the complaint was dismissed.

Among other things in the opinion of the Commission, say as follows:

"The act to regulate commerce was largely induced by discriminations which existed in favor of commercial centers as against non-competitive points. The passage of that act found in effect, particularly through all the southern territory, a system of rates which grossly discriminated against the intermediate points in favor of the trade center, and that system largely exists at the present day. This Commission has always believed that system to be wrong in theory and pernicious in its effects, and has from the first used its best efforts to break it up as a system. While there may be many instances in which the more distant point ought to enjoy the lower rate, our belief is that, as a rule, the small intermediate point should have as good a rate as the more distant competitive point. Now, this practice of floating cotton tends to bring about

exactly that condition of things. Instead of centralizing the business of compressing and handling cotton at Memphis, it tends to distribute it among the small towns throughout that section of the South. The effect is to build up many of these interior communities. They are enabled to have a compress and bank, and whatever else comes along and with them. We believe, then, that this practice benefits the carrier, benefits the producers, and tends to accomplish in one way what the statute which we are administering was intended to accomplish in a different way. So believing, we are not disposed to interfere with this method of handling cotton, unless it is clearly in violation of the Act to Regulate Commerce." \* \* \*

"The Memphis Freight Bureau, in its brief, insists that this system discriminate against the City of Memphis. It should be carefully noted just what is meant by 'discrimination' as thus used. It is alleged in the brief filed by Mr. Baxter for several of the defendants that Memphis has been offered and has refused the advantages of the floating system. There is no claim on the part of the Memphis Freight Bureau that Memphis has ever asked and been denied the benefit of this system. It is not a case, therefore, where advantages have been accorded to these interior points and refused to Memphis, and there is no discrimination against Memphis in that sense of the term. As already seen, the location of Memphis upon the Mississippi River gives to that city a remarkably low rate upon cotton to points of consumption. These rates are much lower than those from interior stations. The result is that such interior points found it to their advantage, before the practice of floating was inaugurated, to send cotton into Memphis, there to be compressed and marketed. The system of

floating renders this unnecessary, so that to-day cotton which formerly went to Memphis is handled at interior compress points. When it is said, therefore, that the floating system **discriminates** against Memphis, it is really meant that it works to the **disadvantage** of Memphis. If it is illegal and can be stopped, that, of course, will redound to the benefit of Memphis; and this is the reason for the action of the Freight Bureau of that city."

This cause is identical with the case at bar, and the statement made by the Commission in their opinion applies to the facts in this cause even with greater force than in the case before the Commission. We especially call attention to the statement in the opinion as follows:

"Now, this practice of floating cotton tends to bring about exactly that condition of things. Instead of centralizing the business of compressing and handling cotton at Memphis, it tends to distribute it among the small towns throughout that section of the South. The effect is to build up many of these interior communities. They are enabled to have a compress and bank and whatever else comes along with them."

The Commission further says:

"When it is said, therefore, that the floating system discriminates against Memphis, it is really meant that it works to the disadvantage of Memphis."

So in the case at bar. The present rates of the Texas & Pacific Railway Company do not discriminate against New Orleans, but works to its disadvantage, in that it enables the interior mills to preserve their natural ad-

vantages and gives to them the business that they are legitimately entitled to, and they are to the disadvantage of New Orleans in that they do not tend to build up for the City of New Orleans an artificial condition at the expense of the interior mills and at the expense of the railway company.

There is no contradicting these facts, and it is the only logical conclusion that can be deduced from the facts in the case. It is clearly the intent of the Railway Commission of Louisiana by their Order No. 484 to give to the City of New Orleans an artificial condition, and to deprive the interior mills of their natural advantages. The effect of the Commission's proposed rates will tend to break down the interior mills and deprive interior communities of their natural advantages for the benefit of the New Orleans mills and the City of New Orleans. In other words, it is an attempt to keep alive a commercial condition that has been slowly dying for years; a commercial condition that should not exist at all; a commercial condition based upon an artificial condition and an expense both to the producers of cottonseed, the interior mills and communities and railways of Louisiana.

Judge Thomas M. Cooley, while chairman of the Interstate Commerce Commission, in the fourth annual report of the Interstate Commerce Commission discussed in a logical and philosophical manner the theory of rate-making. This will be found on pages 13 to 21 of the report.

Among other things, Judge Cooley makes the following statement:

"The carriers are entirely right in assuming, as they have done heretofore, that they best perform

their duty to the public when they take into consideration in making their classification and in fixing their rates, not merely the question of cost to themselves and of value to the owner of the property carried, but every consideration of a public nature which can fairly bear upon the question of public usefulness."

All of these factors were taken into consideration by the Texas & Pacific Railway Company in making their existing rates. (See deposition of Mr. Redfield.) And it is evident that the Commission did not take into consideration any conditions, whatsoever, in making their proposed Order No. 484.

The proof is uncontradicted in this cause, that, if a reduction of twenty-one per cent. was made in the entire revenues of the Texas & Pacific Railway Company that is made by the Commission's Order No. 484, and assuming the cost on local business is only twenty per cent. in excess of their through business, that the road would be operated at a loss, and that it would cost about \$102 for every \$100 taken in. (See deposition of Mr. Tower, pp. 75-76.)

It is further in evidence, and uncontradicted, that the rate per ton per mile received in handling cottonseed and its products was  $86/100$  of one cent per mile, and that the average rate received from all freight was  $991/1000$  of one cent per ton per mile. The rate per ton per mile on cotton seed and its products being  $13/100$  of one cent less than the average.

If cottonseed and its products had been handled under the Commission's proposed rate, it would have been



handled upon a basis of about 70/100 of one cent per ton per mile—almost one-third less than the average received from handling all traffic. Thus showing, almost to mathematical certainty, that the rate on its face is confiscatory, unreasonable and unjust. In the case of *Ames v. Union Pacific Ry. Co.*, Fed. Rep., 64, pp. 165 to 189, Judge Brewer held:

“The statute of Nebraska prescribing local freight rates on railroads, which reduce such rates 29.5 per cent. are invalid, where the rates prescribed are such, as to companies operating roads within the State and doing interstate business, that there would be no **net earnings** from transportation of freight if such rates were applied to all their business.”

The testimony of Mr. Tower and Mr. Redfield is undisputed that, if the Commission's proposed reduction, as set out in Order No. 484, were applied to all rates of the Texas & Pacific Railway Company, its business would be carried on at a considerable loss. The above doctrine was reaffirmed in the same case by the Supreme Court of the United States in 169 U. S., pp. 467 to 550. In the last decision (169 U. S., p. 526) the Supreme Court of the United States laid down the following rule:

“A State enactment or regulations made under the authority of a State enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation, as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law and deny to it the equal protection of the

laws, and would, therefore, be repugnant to the Fourteenth Amendment of the Constitution of the United States."

That is the law of the land to-day.

We submit, that the effect of the Commission's Order No. 484, as applied to the business of the Texas & Pacific Railway Company in the handling of cottonseed and its products would bring it directly within this rule, in that it would require us to perform a service for which we would not receive a reasonable compensation; to perform a service at a loss, the effect of which will be to deprive the Texas & Pacific Railway Company of its property without due process of law and to deny to it the equal protection of the law.

We have established in this case the value of the Texas & Pacific Railway Company's property at more than \$50,000 per mile. This does not include its equipment. We have established the fact that the property was economically managed in every particular, and that, under existing rates, it has barely been enabled to earn a sufficient revenue to meet its fixed interest charge on a value of less than \$17,000 per mile; except that, for the last three years, it had been enabled to pay an interest payment upon its second mortgage bond of a little more than \$16,000 per mile. That it is in need of funds with which to better and improve its property, and that its only way of obtaining these funds is out of its current earnings, and that it cannot afford to have its revenue reduced. (See testimony of Mr. Throne.)

As to the elements of the value that should be taken into consideration, we refer the Court to the case of

**Metropolitan Trust Company v. Houston & Texas Central R. R. Co., Fed. Rep., No. 90, pp. 683 to 690.**

We further call the Court's attention to the decision in the case of **Chicago, Milwaukee & St. Paul Ry. Co. v. Tompkins**, 176 U. S., pp. 167 to 180, as laying down a broad and general rule for the guidance of the Court in the matter of ascertaining the reasonableness of rates and the right of the railway company to earn a reasonable return upon its property.

We call attention of the Court to the fact that the learned Judge who wrote the opinion in that case approved of the practice of referring such matters to a competent and reliable Master to make all needed computations and find fully the facts. That, in accordance with this suggestion, the case in question was referred to a master. (See case of **Chicago, Milwaukee & St. Paul Ry. Co. v. Smith**, 110 Fed. Rep., p. 474.) And one of the Master's findings was as follows:

"The business of complainant has at all times been conducted efficiently, economically and honestly, and the operating expenses have in no case been greater than such efficient, economic and honest management required."

And, upon this finding of the Master, the Court rendered an opinion in the case, holding the proposed rates of the railway companies of South Dakota to be unreasonable and unjust. The Court said in regard to the finding of the Master:

"Such a finding must always be an important one in cases of this character."

We respectfully submit that your Honors will be obliged to make the same identical finding in this case, for the undisputed testimony is to the effect that the business of the Texas & Pacific Railway Company has at all times been conducted efficiently, economically and honestly, and the operating expenses have in no case been greater than such efficient, economic and honest managements required.

We respectfully further submit that the Texas & Pacific Railway Company might well be classed by the Court with that class of railroads in which were placed the Minneapolis & St. Louis Railroad Company in the **Minnesota Rate case**. (See page 469, Supreme Court Rep. 230.) In fact, the Texas & Pacific Railway Company has shown a greater necessity for an increase in its earnings than were shown in the case of the Minneapolis & St. Louis Railroad Company. The **Texas & Pacific Railway Company** has shown a value much larger than the Minneapolis & St. Louis Railroad Company; that it is operated economically; that it was providently located; that it has not been burdened with any heavy fixed charges; that the road was paid for in cash or property; and, that under even the best of conditions existing in its territory, it had not been enabled to pay any dividend upon its stock, on the contrary, its stock had been assessed ten (10%) per cent. And under the most economical management, whose ratio of operating expenses to earnings was much less than other lines operating in this territory, the road was sadly in need of betterments, both as to roadway and equipment, in order to perform its service to the public; a road whose only means of

making these improvements was from its revenues from its traffic, both freight and passenger. In fact, a road that could not afford to have any reduction made in any of its rates, especially a reduction that run from twenty per cent. to as high as forty-seven per cent. in one of its most valuable agricultural products.

That, under these conditions, the question of entering in detail as to the cost of the road and its value, the value of its stock and bonds, *et cetera*, should not be required, at least not required in the same minute detail that would be required in a road better situated and better provided with net revenue.

It may be well said by the Court, as was said in the *Minnesota Rate case* (page 472, U. S. Supreme Court Rep. 230):

"In view of the actual results of the business in the State and the clearly established facts with respect to the conditions of traffic upon this road, the conclusion cannot be escaped that the rates prescribed by the acts and orders of Minnesota would not permit a fair return to this company."

This statement can well be applied to the Texas & Pacific Railway Company in this instance, especially in view of the peculiar conditions growing out of the making of this order by a Commission who had already decided that these very rates were reasonable, and any change would be unjust to a large number of shippers on the line of the Texas & Pacific Railway in Louisiana.

We further submit under the first assignment of error that no presumption exists under the constitutional laws creating the Louisiana Railroad Commission that their



rates are reasonable (Con. La., 285) and even if such presumption did exist, the Constitution requires that the rates established by the Commission shall be reasonable. The complainant in this case has established by a large preponderance of undisputed testimony that the Order No. 484 attacked herein, fixing rates on cottonseed and products were unreasonable, unjust and confiscatory.

And we further respectfully submit that by the evidence in this cause, and by the decisions of the Courts of the United States, the complainant has established the fact that its present rates are just, fair and reasonable; and that the proposed rates of the Railroad Commission of Louisiana as embodied in their Order No. 484 are unjust, unfair, unreasonable and confiscatory.

For the reasons assigned, we respectfully ask that the decision of the Circuit Court of Appeals be reversed, and that the complainant herein be granted the relief prayed for in its bill of complaint.

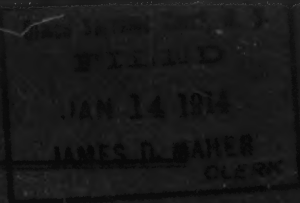
Respectfully submitted,

THOMAS J. FREEMAN,

HOWE, FENNER, SPENCER & COCKE,

Solicitors for the Texas & Pacific Railway  
Company.





IN THE  
Supreme Court of the United States  
OCTOBER TERM, 1913

THE TEXAS & PACIFIC RAILWAY  
COMPANY, Appellant,

Versus

THE RAILROAD COMMISSION OF  
LOUISIANA, et al., Appellees.

No. 185

Appeal from the United States Circuit Court of  
Appeals, Fifth Circuit.

BRIEF AND ARGUMENT FOR APPELLEES.

RUFFIN G. PLEASANT,  
Attorney General, State of Louisiana,

WYLLIE M. BARROW,  
Assistant Attorney General,

Solicitors for Appellees.

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**IN THE**  
**Supreme Court of the United States**  
**OCTOBER TERM, 1913**

**THE TEXAS & PACIFIC RAILWAY  
COMPANY, Appellant,**

**Versus**

**THE RAILROAD COMMISSION OF  
LOUISIANA, et al., Appellees.**

**No. 186**

---

**Appeal from the United States Circuit Court of  
Appeals, Fifth Circuit.**

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**BRIEF AND ARGUMENT FOR APPELLEES.**

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**INTRODUCTION.**

This appeal presents to the Court a controversy over rates on cotton seed and cotton seed products established by the Railroad Commission of Louisiana for the Texas & Pacific Railway Company to apply on shipments between points in the State of Louisiana.

The suit was instituted by the Texas & Pacific Railway Company in the Circuit Court of the United States for the Eastern District of Louisiana, Baton Rouge Division, attacking as unreasonable the rates established by the Railroad Commission in its Order

No. 484, adopted December 13, 1905. While the bill prays for a temporary restraining order, none was issued, because, at the time the suit was filed the orders of the Louisiana Railroad Commission were, under the provisions of the Constitution of Louisiana as originally adopted and then in effect, suspended by the mere filing of the suit. (Article 286, Constitution of Louisiana, 1898.)

The rates of the Railroad Commission of Louisiana are on the ordinary mileage scale, and the order in terms and figures is as follows:

“Longbridge Cotton Oil Company

Versus

Texas & Pacific Railway Company.

Mileage Rates on Cotton Seed and Cotton Seed Products.

Heard November 9, 1905. December 12, 1905.

The Commission having under consideration the record in this case, and after full hearing and investigation, finding the rates on cotton seed and cotton seed products on the Texas & Pacific Railway in Louisiana to be excessively high as compared with the rates on other railways in Louisiana, and in other states, and in some instances, discriminative and unjust to certain localities, and believing the best interests of the general public will be subserved by the establishment of a uniform mileage rate on the commodities named, it is, therefore,

**ORDERED**, That the following rates be and are hereby established on cotton seed and cotton seed products, to be transported between points on the said railway in Louisiana:

Miles	Cotton Seed, in Car- loads, Min. Weight 24,000 lbs.	All Cotton Seed Products Except Oil and Tank Bottoms, Min. Weight 24,000 lbs.	Oil and Tank Bot- toms, Min. Weight in Barrels 30,000 lbs., in Tank Cars 40,000 lbs.
10 miles and less.....	3	3	4
20 miles and over 10...	4	3.5	5
30 miles and over 20...	4.5	3.75	6
40 miles and over 30...	5	4	7
50 miles and over 40...	6	4.25	7.5
60 miles and over 50...	7	4.5	8
70 miles and over 60...	7.5	4.75	8.5
80 miles and over 70...	7.5	5	9
90 miles and over 80...	8	5.25	9.5
100 miles and over 90...	8.5	5.5	10
110 miles and over 100...	9	5.75	10.5
120 miles and over 110...	9	6	11
130 miles and over 120...	9.5	6.25	11.5
140 miles and over 130...	9.5	6.5	12
150 miles and over 140...	10	6.75	12.5
160 miles and over 150...	11	7	13
170 miles and over 160...	12	7.25	13.5
180 miles and over 170...	13	7.5	14
190 miles and over 180...	14	7.75	14.5
200 miles and over 190...	14.5	8	15
210 miles and over 200...	15	8	15.5
225 miles and over 210...	15	8	16
Over 225 miles.....	15	8	17



The rates proposed will apply as follows:

On cotton seed, straight carloads.

On cotton seed cake and meal, straight or mixed carloads.

On cotton seed ashes, straight carloads.

On cotton seed hulls, straight carloads.

On cotton seed oil and tank bottoms, in barrels, straight or mixed carloads.

All rates previously in effect on cotton seed and cotton seed products between points on the Texas & Pacific Railway in Louisiana are hereby cancelled.

The above rates on cotton seed will apply when 50 per cent of the products of the seed hauled in, other than linters, hulls and ashes, are shipped out via the Texas & Pacific Railway, otherwise, the rates on cotton seed will be three cents per one hundred pounds higher. This applies except on seed shipped into New Orleans or Gretna.

Effective December 24, 1905.

**BY ORDER OF THE COMMISSION.**

Baton Rouge, Louisiana, December 13, 1905.

Commissioners:

C. L. DeFUEENTES,  
Chairman;

W. L. FOSTER,  
OVERTON CADE.

W. M. BARROW, Secretary."

---

After this order was adopted, the Texas & Pacific Railway Company applied to the Railroad Commission of Louisiana for a re-hearing, which was granted,

and subsequently, on the 8th of January, 1906, the Commission held another hearing, took additional evidence, heard further argument, and refused to modify its Order No. 484 (Record, page 12), the rates in which would have become effective on February 1, 1906, except for the filing of this suit.

The rates named in Order 484 have never, therefore, been in effect.

The bill, filed under Article 285 of the Constitution of the State of Louisiana, attacks the rates so established upon the ground that they are unreasonable, unjust and unremunerative, and will not afford complainant a reasonable return for the service in transporting the commodities in question. There is no allegation that the Federal Constitution is violated by the Commission's order. Jurisdiction rests solely upon the federal charter of appellant.

The answer of the defendant avers, in substance, that the order of the Railroad Commission of Louisiana establishes rates on cotton seed and cotton seed products which are reasonable and just.

#### PROCEEDINGS IN THE LOWER COURTS.

The case was heard by Solomon Wolff, Esquire, of the New Orleans bar, the special master, who was directed by the Court to hear evidence and report his findings of fact and of law. The special master filed a principal and a supplemental report, in which he

found the facts to be in favor of complainant's bill, and in which he recommended that the prayer of complainant be granted. (Printed Record, pages 23-53.)

Exceptions were filed to the principal and the supplemental reports of the special master, and upon hearing the Circuit Court of the United States for the Eastern District of Louisiana (Honorable Rufus E. Foster, Judge) sustained the exceptions, ordered the report set aside, and the bill dismissed without prejudice. (Printed Record, pages 290-292.)

From this decree, an appeal was taken by complainant to the United States Circuit Court of Appeals, Fifth Circuit, which, in the opinion rendered November 22, 1911 (District Judge Newman being the organ of the Court), and its decree of the same date, affirmed the opinion and decree of the lower court, 192 Fed. Rep. 280. (Printed Record, pages 299-306.) From this decree, complainant prosecutes this appeal.

#### REFERENCES TO PARTIES.

Where the word "Commission" is used herein, it refers to the Railroad Commission of Louisiana.

Where the words "Railroad Company" are used herein, they refer to the Texas & Pacific Railway Company.

## ABSTRACT OF ARGUMENT.

## I.

The Railroad Commission of Louisiana is authorized by the Constitution of Louisiana to make reasonable and just rates for railroads operating in the State of Louisiana.

## II.

The orders of the Railroad Commission of Louisiana are presumed to be reasonable and just, and the burden is upon the complainant to show the contrary.

## III.

The evidence shows that the complainant failed to overcome the presumption of reasonableness which attaches to the orders of the Railroad Commission of Louisiana.

## IV.

The evidence shows that the rates established by the Railroad Commission of Louisiana in its Order No. 484 on cotton seed and cotton seed products are reasonable and just.

## V.

The rates fixed by the Railroad Commission of Louisiana in its Order 484, complained of, are not so low as to deprive the complainant of a reasonable return for the services rendered.

## VI.

In this case, the complainant has failed to show that the order attacked is below the cost of rendering the service.

## VII.

It follows, therefore, that the complainant's bill should be dismissed, without prejudice.

## VIII.

The findings of facts are concurred in by the two lower courts.

## IX.

Concurrent findings of facts of the courts below in a suit in equity will not be disturbed by the Federal Supreme Court on appeal unless clearly erroneous.

## ARGUMENT.

## I.

Since the burden of proof is upon the carrier attacking the rates established by the Commission in its Order 484, an examination of the evidence to ascertain whether or not it has successfully discharged its burden and overcome the presumption of reasonableness attaching to the Commission's order, becomes necessary.

The rates now in effect in Louisiana for the transportation of cotton seed and cotton seed products on



the Texas & Pacific Railway, and the rates which will be in effect should the order of the Commission be maintained and enforced, are compared in a statement made by the secretary of the Railroad Commission, being exhibit marked "D 7."

From this comparative statement it will be observed that the sole aim and object of the Commission has been to so regulate the rates for carrying cotton seed and cotton seed products in Louisiana as to do away with the discrimination now in existence in the rates on the Texas & Pacific Railway against the oil mills in New Orleans and Gretna by putting it in the power of these mills to purchase cotton seed in a territory which is now practically forbidden to them to enter, while at the same time in no manner interfering with the advantages possessed by the country mills by reason of location.

The existing rates are voluntarily fixed to apply to each mill point from stations on the Texas & Pacific Railway, varying in each locality both as to the amount charged and the distance.

The Commission's rates are on a mileage basis, with fixed maximum after certain distances are reached, thus affording ample, equal and non-discriminative rates to all shippers.

The oil mills in New Orleans and Gretna could only expect to begin getting a supply of cotton seed



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at a distance of one hundred and ten (110) miles from New Orleans on the line of plaintiff's railroad, and for a distance of from one hundred and ten (110) to two hundred (200) miles from New Orleans on plaintiff's line of railroad they could purchase cotton seed profitably. (Testimony of J. C. Hamilton, Record, page 141; testimony of Geo. G. Bradshaw, Record, page 169.)

The following table of rates and distances shows the present charges of plaintiff for hauling a ton of cotton seed, as well as the charges to which it will be entitled if the order in contest should be put in, reduced to rates per ton, to-wit:

<i>Miles Hauled.</i>	<i>Present Tariff.</i>	<i>Proposed Tariff.</i>
120 miles and over 110..	\$2.90 per ton	\$1.80 per ton
130 miles and over 120..	3.00 per ton	1.90 per ton
140 miles and over 130..	3.10 per ton	1.90 per ton
150 miles and over 140..	3.20 per ton	2.00 per ton
160 miles and over 150..	3.30 per ton	2.20 per ton
170 miles and over 160..	3.40 per ton	2.40 per ton
180 miles and over 170..	3.50 per ton	2.60 per ton
190 miles and over 180..	3.50 per ton	2.80 per ton
200 miles and over 190..	3.50 per ton	2.90 per ton

By way of illustration, we call attention to the fact that the charge made by the plaintiff company one time for hauling cotton seed on its Port Allen portage, from New Roads to New Orleans, was \$1.50

per ton, and that it now charges \$3.10 per ton for the same haul (Record, pages 169, 246) and that the rate ordered put in by the defendant is \$1.90 per ton for that haul, 40 cents per ton more than plaintiff itself formerly charged for the same service. This is referred to merely to show that, throughout this entire controversy, the Commission has been acting with the utmost fairness toward plaintiff and with a desire only to adjust, as far as possible, the tariff of rates, so as to enable the oil mills in New Orleans to exist, and without in any manner interfering with the prosperity of those engaged in business in the country parishes of the State of Louisiana along the line of plaintiff's railroad.

The tariff of rates now charged by complainant for the transportation of cotton seed and cotton seed products in Louisiana was in existence even before the creation and organization of the Railroad Commission, and, while it was filed by appellant with the Commission and accepted by the latter until such time as it would be in a position to determine what ought to be a proper tariff for such commodities, it was not a tariff which the Commission had adopted. (Testimony of Barrow, Record, pages 114-115.) The present tariff of rates was filed by complainant with the Railroad Commission in compliance with a certain rule or regulation adopted by the Commission

shortly after its organization, requiring all tariffs to be filed with it, but it was not accepted by the Commission in the sense of an order adopted by it, fixing the rates for the transportation of cotton seed and cotton seed products. The Commission made no attempt, previous to the adoption of Order 484, to fix rates on cotton seed products on the Texas & Pacific Railway. This order was adopted by reason of the many complaints made to the Commission concerning "the rates on cotton seed in general in the State of Louisiana, and also especially against the rates charged by the Texas & Pacific Railway Company." (Testimony of Barrow, Record, page 116.)

## II.

**Order No. 484 was not the result of arbitrary conjecture.**

This order was adopted after several hearings had been had (Barrow, Record, page 116), and at which the cotton seed mill interests, as well as the complainants, were represented and heard (Barrow, Record, page 116); and, as shown by the testimony, the representatives of the country cotton seed oil mills, appearing before the Commission when Order No. 484 was under consideration and was adopted, acquiesced in the rates as adopted, and have since acquiesced in the tariff of rates as set out in Order No. 484 (Barrow, Record, pages 116, 117, 121, 127,



and exhibits "D 4" and "D 6," offered in connection with the testimony of Mr. Barrow and referred to by him, page 116.) (Testimony of J. C. Hamilton, Record, page 135.)

This evidence, as well as other evidence of the same character in the record, absolutely refutes the statement which was made by counsel for complainant in the argument addressed to the lower court, and which will, doubtless, be repeated here — that the only interests which are satisfied with the rates as established by the Commission in and by its Order No. 484 are the oil-mill interests of New Orleans and Gretna. The fact is that the oil mills in the country parishes, as well as those in New Orleans and Gretna, will be benefited by the putting in of the rates fixed and established by the Commission in its Order No. 484. We call the attention of the Court to the bill of complaint (par. 7, Pr. Record, page 5) which erroneously states that the Commission had, at a hearing on May 22, 1905, declared that the tariff of charges which complainant had put in, and which Order No. 484 seeks to change, was fair, just and reasonable; "that existing rates were reasonable and that existing conditions demanded that no change be made." This statement of the case is inaccurate and at variance with the facts.

Even prior to December 10, 1904, the Commission had under investigation the question of the regula-

tion of rates for the transportation of cottonseed and cotton seed products by all of the railroads of the State. On that day, the entire matter was postponed until the next session in May, 1905 (Exhibit D 3); and at a session which was held on May 22, 1905, and at which the entire subject of the fixing of rates for the transportation of cotton seed and cotton seed products by all of the railroads of the State was taken up, the Commission dismissed the case.

(Oder 457, R. R. Com. of La., Record, page 17-18.)

The Commission merely declared, by this ruling, that it would not undertake to regulate the entire traffic in cotton seed and cotton seed products by attempting to fix a uniform mileage tariff applicable to all railroads operating in Louisiana, but that, from time to time, and as the exigencies of each particular case might arise, it would adjust the rates for the transportation of this particular traffic over particular roads. And this is what it has done, for, after it had thus dismissed the case before it, in which it had been asked to fix a uniform mileage tariff for the transportation of cotton seed and cotton seed products applicable to all railroads in the State, it did take up and act upon a complaint made to it by the Longbridge Cotton Oil Company against complainant, the Texas & Pacific Railway Company, and, after a full hearing of that complaint, in which a number

of cotton seed oil mills in the country joined, it entered and adopted Order 484, in which the changes in rates for the transportation of these commodities are to be found. (Testimony of W. M. Barrow, Record, pages 120, 126, 226; also Exhibit "D 4.")

### III.

The Railroad Commission of Louisiana has the power to "adopt, change, or make" reasonable and just rates.

Furthermore, the grant of power to the Railroad Commission of Louisiana contained in Article 284 of the Constitution of Louisiana is "to adopt, change or make reasonable and just rates, charges and regulations to govern and regulate railroad \* \* \* freight and passenger tariffs and service."

Having, therefore, as we believe, demonstrated that there is no merit in the contention of appellant that appellee was not in a position to make any change in the tariff rates for the transportation of cotton seed and cotton seed products over the Texas & Pacific Railway, we are now brought to a discussion of the question whether the evidence justifies the action of the Commission in making the reduction in this tariff of which plaintiff complains. The two lower courts have concurred in finding that it does.

## IV.

The rates established by the Railroad Commission of Louisiana are presumably reasonable. The burden rests upon the party attacking rates so established to overcome such presumption by clear and convincing proof.

The first assignment of errors by appellant (Pr. Record, page 308) is:

"That the Court erred in rendering its judgment and decision holding that Order No. 484 of the Railroad Commission is entitled to the presumption that the rates fixed are reasonable and fair, and that the burden is clearly upon the complainant to show to the contrary before it can be accorded the relief it seeks."

There is perhaps no principle in the law or equity more clearly settled than that the orders of a State Railroad Commission, when not arbitrarily made, are presumed to be reasonable. The burden is upon the carrier attacking such orders to show wherein they are unreasonable. There was a full investigation made by the Commission before its Order No. 484 was rendered. The railroad company was given notice of the rates the Commission proposed to adopt by a circular. Every opportunity was afforded the appellant to prove that the suggested rates of the Commission were too low to afford adequate compensation. This was not done to the satisfaction of the



Commission, and the rates now in contest were therefore adopted. It cannot be successfully claimed that the rates named in Order No. 484 were arbitrarily adopted. There were two elaborate hearings. The presumption of reasonableness therefore attaches to the order.

The master's report (page 33, VI, Record) contains the following language:

"Without any presumption for or against the rates, fixed by the Commission, I now inquire whether the rates in themselves are fair and reasonable?"

And appellant's counsel urged this contention before the Circuit Court of Appeals, and repeats it here in the assignment of errors.

But this is not the law, as declared by repeated decisions of this Court, and by the decisions of the Supreme Court of the State of Louisiana.

Aside from the well-recognized rule that a complainant must make good, by evidence, every specification in the bill which is controverted by answer, Order No. 484 of the Commission is *prima facie* reasonable.

Article 284 of the Constitution of the State of Louisiana has undoubtedly given to the Railroad Commission of that State all necessary powers respecting the control and regulation of certain quasi-public corporations, among which are railroad com-



panies, and, within the limits of the grant, its orders are entitled to the respect accorded any executive or legislative act, for, like the Legislature or the Executive, it is presumed to have proceeded with full knowledge of the facts upon which its orders are based.

In the case of **Morgan's Louisiana & Texas R. R. & Steamship Co. et al. vs. Railroad Commission of Louisiana, et al.**, 109 La., 247, 263, the Supreme Court of Louisiana held that:

"The mere reference of disputed issues between the parties to this Court for adjudication was not intended to constitute it an 'administrative' board, revisory in character over the orders and conclusions of the Commission. Our action is judicial, not administrative. It was not intended that we should substitute our judgment for that of the Commission every time there is a dispute touching the particular place on the line of the railroad where it would be best for the public interest that a station or a depot should be placed. To come successfully before this Court, the appellant must be able to point out some legal right of its own which has been infringed upon."

In **Morgan's La. & Texas R. R. & S. S. Co. vs. Railroad Commission**, 127 La. 635 (636), the Supreme Court of Louisiana says:

"The case of **Railroad Commission vs. Cumberland, etc., Co.**, 212 U. S. 223, 29 Sup. Ct. 361,

53 L. ed. 577, is cited on behalf of defendant, to the effect that:

'The rates \* \* \* must be regarded as prima facie fair and valid, or, in other words, the onus was upon the complainant to show that they were, what it asserts, confiscatory and unreasonable.'

No one will dispute the correctness of the rule thus stated, and we are of the opinion that as the members of the Railroad Commission are sworn officers, acting without interest or prejudice, their rulings are to be accepted as correct until shown to be incorrect."

Also *Texas & Pacific Ry. Co. vs. R. R. Com. of La.*, 127 La. 387, 53 South 660.

In *Cumberland Telephone & Telegraph Co. vs. Railroad Commission of Louisiana*, 212 U. S. 414, 53 L. ed. 577 (581), this Court disposed of appellant's contention that no presumption of reasonableness attaches to an order of the Commission by holding that the burden of proof was upon the plaintiff, the Cumberland Telephone & Telegraph Company, to show that the order of the Railroad Commission of Louisiana, there attacked, was unreasonable and unjust, and that there is a presumption, in every instance where an order of the Commission has been preceded by a hearing, that such order is a legal and valid order.

In that case the Court said (421):

"Like any other case, the onus rests upon this complainant to prove the existence of the fact it alleges—viz., that the rates are so low as to be confiscatory, or at least unreasonable and unjust."

Again:

"We are of the opinion that the Court erred in its conclusion that there was no presumption in favor of the validity of the rates promulgated by the Order No. 552. We think the evidence shows that these rates were really not adopted by arbitrary conjecture, nor does it show that they were based on no investigation or without the exercise of judgment or discretion."

"The rates, therefore, promulgated must be regarded as *prima facie* fair and valid, or, in other words, the onus was upon the complainant to show that they were, what it asserts, confiscatory or unreasonable." (page 423).

In *Willcox vs. Consolidated Gas Co.*, 112 U. S. 54, the Court said:

"Upon a careful consideration of the case before us, we are of opinion that the complainant has failed to sustain the burden cast upon it of showing beyond any just or fair doubt that the acts of the Legislature of the State of New York are in fact confiscatory."

In *ex parte Young*, 209 U. S. 123 (166), 52 L. ed. 714 (731), the Court says:

"An act of the Legislature fixing rates, either for passengers or freight, is to be regarded as

*prima facie* valid, and the onus rests upon the company to prove its assertion to the contrary."

And in the Minnesota Rate Case (230 U. S. 352), this doctrine is reiterated.

# V.

That the appellant has failed to discharge the burden of overcoming the presumption of reasonableness which attached to the order of the Railroad Commission, not arbitrarily adopted, is clearly shown by the evidence.

The first witness whose evidence is relied on by complainant is H. L. Redfield (Pr. Record, pages 54-73).

He testified that the rates now in effect for the transportation of cotton seed and cotton seed meal over the complainant's railroad in Louisiana are reasonable and just, and that the tariff of rates proposed by the Railroad Commission of Louisiana is unreasonable and unjust. In explaining why, in his opinion, the present tariff of rates for the transportation of such commodities over complainant's railroad in Louisiana is a just and reasonable one, the witness gives the following reasons for his opinion:

First.—Because these commodities move readily, upon these rates, in competition with the same character of business in adjacent States.

Second.—Because the shippers and dealers in these commodities are ready at all times to purchase and move the same upon the present tariff of rates, and are enabled to make a large profit out of the handling of same; and, testifying further as to what, in his opinion, constitutes a reasonable rate, he states:

Third.—That a rate which promptly and readily moves a commodity under competitive conditions, and which enables the purchaser, dealer and manufacturer to earn a fair profit, and the carrier a fair return for the services rendered by it, and which, at the same time, affords the producers a fair profit for the raw product, is a reasonable rate. (See answer of H. L. Redfield to the sixth direct interrogatory propounded to him by complainant, Record, pages 55-56.) Continuing his testimony, this witness, when asked, in the seventh direct interrogatory propounded by plaintiff, to state what other factors, if any, he took into account in making up the present tariff of rates, states, in answering the seventh interrogatory in chief:

“We further took into consideration the fact that we were entitled to handle the manufactured product of the seed.” (Record, page 56.)

The witness then indulges in an argument against the Commission's tariff and in favor of the existing



tariff put in by the complainant company by stating:

(a) That

"the proposed rate of the Louisiana Commission eliminates this factor to a large extent by reducing the rate to New Orleans and Gretna, and excepting New Orleans and Gretna from that provision of the tariff which makes it necessary for fifty per cent of the products of the seed handled in to be shipped out over the line moving the seed."

(b) That,

"under this exception, the Texas & Pacific Railway Company would obtain no revenue except upon the inbound seed going to New Orleans and Gretna."

(c) That the effect of this would be

"to give to New Orleans and Gretna an advantage over the interior mills."

(d) That a large proportion of the manufactured product from cotton seed, such as oil and cake, is marketed in New Orleans and Gretna, and is not forwarded by complainant's road to any point thereon, and that, "to a very large extent it is exported direct from New Orleans and Gretna by the mills at those points."

(e) That, under these conditions, complainant "would get practically no revenue from the manufactured product of the seed." (Record, pages 55-56.)

Controverting the testimony of Mr. Redfield are the following facts:

First.—There is no evidence whatever in the record concerning the movement of cotton seed and cotton seed products in other States adjacent to the State of Louisiana.

Second.—That, while it may be true that cotton seed is readily disposed of to the local oil mills on the line of complainant's railroad, even upon the present existing tariff of rates, it is because cotton seed is a perishable article which cannot be kept in that portion of Louisiana traversed by the complainant's railroad any great length of time, and, therefore, must be disposed of at all hazards; but it is not true that it finds a ready sale under existing conditions, except to the local mills, since the oil mills in New Orleans and Gretna are unable to buy in the territory where the seed is produced on account of the excessive freight rates on that commodity to the oil mills at these points; and, furthermore, it is not true that a large profit to shippers and dealers in this commodity is made out of the handling of same. (Pr. Record: Barrow, page 130; Hamilton, pages 148, 152, 153, 159, 160; Bradshaw, pages 169, 171, 172, 174, 181, 182; Hauser, pages 200, 201; Ermon, pages 221; Bachina, pages 230, 231; Drown, pages 233, 234, 235, 236, 239, 241, 242.)

If the tariff of rates proposed by the Commission should be put in, there would immediately arise a

competition between the oil mills in the country and those in New Orleans and Gretna in the purchase of cotton seed, which would inure to the benefit of the farmer or producer, and that the witness Redfield is again wrong when he states that that class of the people would not be benefited if the order of the Commission should be maintained. (Bradshaw, pages 174, 196; Barrow, page 130; Hauser, page 212; Drown, page 242; Ermon, page 223.) Equally unfortunate is this witness in the careless statement made by him that, if the order of the Commission should be maintained, the complainant company would receive no revenue from cotton seed products, and would only derive a revenue for the transportation of cotton seed itself, for he says a large proportion of the manufactured product from cotton seed, such as oil and cake, is marketed in New Orleans and Gretna; that the same is not forwarded by complainant's road to any point therein, but is exported direct from these points, and that, under such conditions, complainant "would get, practically, no revenue from the manufactured product of the seed." (Answer of H. L. Redfield to seventh interrogatory in chief, Record, page 56.)

The witness has testified carelessly about a matter concerning which he not only knows nothing, but in respect to which he has been flatly contradicted by other witnesses.

For instance, Geo. C. Hauser, assistant manager of the Southern Cotton Oil Company, located at Gretna, has testified that during the season from May 31, 1902, to May 31, 1903, the oil mill of that company received from that portion of the complainant's railroad known as the Port Allen or New Roads branch 1,700 tons of cotton seed, and from other territory in Louisiana on the line of that road 1,400 tons more, making a total of 3,100 tons; that, during the season from May 31, 1903, to May 31, 1904, that mill received from the Port Allen or New Roads branch 800 tons of seed, and from other points on the line of that railroad 200 tons, making a total of 1,000 tons; that, during the season of 1904 to 1905, the same mill received from the Port Allen or New Roads branch 128 tons of seed, and from other points along the line of complainant's railroad 1,360 tons, making a total of 1,488 tons; and that for the season of 1905-1906 it received from the Port Allen or New Roads branch 135 tons of seed, and from other points on the line of complainant's railroad in Louisiana 223 tons, making a total of 358 tons of seed, and that from that time no further purchase had been made from that territory, which was entirely abandoned because the freight rates were too high. (Record, pages 200, 201.)

That witness testified that the mill of the Southern Cotton Oil Company makes cooking oil and lard



compound out of the seed which it crushes, which is bought from various points along the lines of the Illinois Central and Yazoo & Mississippi Valley Railroads, as well as along the line of the Morgan's Louisiana & Texas Railroad & Steamship Company in Louisiana, as well as from the crude oil bought from the local country oil mills in Louisiana, and that this product in cotton seed cooking oil and lard compound is shipped from the mill or refinery in Gretna to various points over the railroad of complainant and other railroads in the State. (Hauser, Record, pages 201, 202.)

Against this, Mr. Hauser testified that, in spite of the small receipts of cotton seed at the mill of the Southern Cotton Oil Company received from points on the line of the complainant's railroad, the shipments made from the mill over complainant's railroad in cotton seed oil and lard compound largely exceeded in tonnage the number of tons of seed so received. (Hauser, Record, pages 203, 204.) For instance, that mill received during the season from May 31, 1903, to May 31, 1904, over complainant's railroad in Louisiana, a total of 1,000 tons of cotton seed, and shipped out over complainant's railroad in cotton seed oil and lard compound, during the same season, the equivalent of 27,000 tons of seed. During the season of 1904-1905 it received over complain-



ant's railroad in Louisiana 1,488 tons of seed, and shipped out over same road in cooking oil and lard compound the equivalent of 16,000 tons of seed; and, while, during the season of 1905-1906, that mill received from points on complainant's railroad in Louisiana only 358 tons of seed, it shipped out in cooking oil and lard compound the equivalent of 17,000 tons of seed. (Hauser, pages 201, 203, 204.)

In other words, the tonnage in cooking oil and lard compound shipped during each of the seasons just given far exceeds, not only the tonnage in seed received from points on the line of complainant's railroad, but the total tonnage in seed received from all points in Louisiana. (Hauser, Record, page 204.) Besides, the rolling stock of the complainant used in transporting cotton seed to this mill is not detained, but is immediately put back into service, loaded with the product of the seed brought in. (Hauser, Record, page 210.)

Again, in refutation of the statement made by the witness Redfield that nearly the entire product of cotton seed received at the New Orleans and Gretna mills is lost to the complainant company in the out-haul because of its being exported from these points, the witness Hauser testified that the Southern Cotton Oil Mill alone manufactured, during the year 1906, 28,000,000 pounds of lard compound, of which

only 4,000,000 were exported. (Hauser, Record, page 211.) (Testimony of C. W. Drown, Pr. Record 252, 253, 254, 255, and that of Henry B. Goldsmith, Pr. Record 256, 258) confirms Mr. Hauser.)

Mr. Redfield also testified that the actual revenue derived by complainant for the transportation of cotton seed and cotton seed products in Louisiana during the year ending December 31, 1905, was the sum of \$114,619.47, and that the revenue which it would have derived for the same traffic, had the tariff proposed by the Railroad Commission been in effect, would have been the sum of \$90,823.52, and that this difference amounts to the sum of \$23,795.95, which he testifies would have been a loss to the complainant. He continues his testimony by stating that, on the actual movement of cotton seed to New Orleans for that year, the proposed reduction in rates would amount to a reduction of about 25 per cent in the revenue, "and that the Texas & Pacific would receive no revenue whatever from the manufactured product of this seed." (Record, page 57.) Granting, for sake of the argument, that the figures thus given by Mr. Redfield are correct on the theory that the same movement of cotton seed and cotton seed products would have taken place had the Commission's tariff of rates been in effect during the year ending December 31, 1905, it does not follow that the same movement would have taken place under the altered

conditions brought about by the changes in the tariff of rates. For instance, it is confidently believed that, under the Commission's tariff, there would be a very much larger movement of cotton seed in general, and to New Orleans and Gretna in particular, without any falling off in revenue from the product of such seed, since the same would be immediately shipped out on complainant's railroad in the manufactured state as cotton seed cooking oil and lard compound. Besides, under our theory of this case, a much larger revenue would be derived by complainant, under the Commission's tariff, on the long haul on cotton seed, than is now derived by it, as, in that event, there would be more buying of cotton seed than is now done by the oil mills in New Orleans and Gretna in the cotton seed territory from which they have been driven by the high tariff of rates now in existence.

That we are correct in our statement that the mills in New Orleans and Gretna have not been buying seed in that territory is shown by the language of the witness Redfield himself when, in referring to this movement of cotton seed and cotton seed products, he says:

"Of the entire movement, only in a comparatively few instances did the distance exceed forty miles." (Record, page 57.)

Equally unreliable is the statement made by the witness Redfield when he testified that the cost of

raising cotton is less in Louisiana than in Texas and Oklahoma and in the Indian Territory, "as labor and supplies are cheaper in Louisiana than in Texas and the Territories," and gave this as a reason for his statement that Louisiana has an advantage over them in marketing cotton seed and the product of such seed. His evidence in this particular is flatly contradicted by that of J. C. Hamilton. (Pr. Record, pages 154, 155; also page 7 of Bulletin No. 16 from the United States Department of Agriculture, Division of Statistics, showing that for the year 1896 the cost of producing an acre of cotton in Louisiana was \$18.05; whereas, in Texas, it was only \$13.60.) We have not been able to obtain any bulletin of later date, so we feel that, in the absence of evidence to the contrary, we may assume, on the presumption of continuance of conditions once shown to exist, that the cost of producing an acre of cotton has continued to be greater in Louisiana than in Texas.

This witness admits, when answering Cross-Interrogatory 10 propounded to him, that the present tariff in effect on complainant's railroad for the transportation of cotton seed in Louisiana is out of proportion as compared between short and long haul rates elsewhere on its line, but he attempts to justify it by the statement "that the rates in Louisiana, as previously stated, are lower than between points on the Texas & Pacific in Texas," although he admits



that commodity rates per ton per mile are usually and should be in inverse ratio to distance, or, in other words, "that local tariff rates should diminish per ton per mile as the distance increases." (Record, page 62.)

Mr. Barrow, then secretary of the Railroad Commission, however, does not agree with the statement of the witness Redfield that the rates in Louisiana on cotton seed over the line of complainant are lower than between points in Texas over the same railroad. He says, referring to Redfield's statement:

"I do not find that statement to be true. My examination of the tariff as adopted by the Railroad Commission of Texas in their Commodity Tariff No. 3 A, as compared with the rate sought to be established by the Railroad Commission of Louisiana in its Order No. 484, shows that, in some instances, the rate sought to be fixed by the Railroad Commission of Louisiana in its Order No. 484 are higher than the rates which are charged in the State of Texas." (Barrow, Pr. Record, page 118.)

The witness Redfield, in another part of his evidence, volunteers the statement that the Railroad Commission of Louisiana had gone to work, deliberately, to build up the oil mills in New Orleans and Gretna, and to wreck those operating in the country parishes in Louisiana, for he says:

"The purpose of the proposed rates evidently is not only to deprive the interior mills of their



natural advantages and donate same to the mills at New Orleans, but also to do this at the expense of the railway company, not only in the matter of requiring it to haul the commodity at an unreasonable rate, but also depriving it of its opportunity to handle the product. It is clearly evident from reading the tariff that the purpose was to make same in favor of the New Orleans mills at the expense of all the other mills of the State."

(See answer of Redfield to Cross-Interrogatory 18. Pr. Record, page 65.)

In this statement he is again flatly contradicted by the testimony of several witnesses offered by defendant. (Barrow, pages 129, 130; Hamilton, pages 135, 136, 137, 162, 164, 165, 166; Drown, pages 242, 248.)

Again in answering Cross-Interrogatory 20 propounded to him, this same witness (Redfield) states that, although he has made no comparison of the tariffs of rates on cotton seed in effect in the States of Arkansas, Mississippi, Tennessee, Alabama, Georgia, South Carolina and Florida, nevertheless his general information is that, in all of these States the carrier of the cotton seed is given "the right in every instance to haul the manufactured product." This statement is utterly untrue, for Mr. Barrow, then secretary of the Railroad Commission, who did investigate the tariffs in nearly all of these States, declares that he had found no provisions in any of

them "for a higher rate to be charged when the carrier failed to receive a certain percentage of the manufactured product." (Barrow, page 119. See, also, Hamilton, page 158.)

We feel, therefore, that the unreliability of the testimony of this witness has been so completely demonstrated that further comment concerning his statements are unnecessary.

## VI.

The argument that if a reduction made on one commodity were made to apply on all commodities it would cause appellant's entire business to be operated at a loss is fallacious and premature when no such reduction has been attempted.

The next witness whose testimony is relied on by complainant is E. W. Tower. He attempts to show the unreasonableness of the tariff of rates fixed by the Railroad Commission, but bases his conclusions upon a false premise. His statement is that if a like reduction in the rates on the entire business of the complainant throughout its entire length of 1,848 miles, as had been made by Order No. 484 of the Railroad Commission of Louisiana in respect to cotton seed and cotton seed products, had been in effect during a period of five years ending December 31, 1905, complainant would have been compelled to operate its railroad at a loss.

In the first place, no attempt has been made to effect a horizontal reduction of a certain percentage in all of the freight tariffs of the complainant's railroad, nor has the Railroad Commission of Louisiana ever sought to make its Order No. 484 apply to any commodity other than cotton seed and cotton seed products; and, in the second place, it involves the proposition that a reduction by the Louisiana Commission of a tariff upon a certain commodity ought not to be put in, because a similar percentage of reduction in rates, applicable to the entire transportation of all freight by complainant, would cause it to do business at a loss.

In other words, the argument is that the Louisiana Commission is without authority to reduce an excessive tariff of rates upon a certain commodity, because the application of the same percentage of reduction to all freight rates upon complainant's railroad would cause it to operate at a loss. It may be that all of the tariffs of rates in Louisiana are too high and all of the tariffs in Texas too low, and yet, according to the very remarkable theory of Mr. Tower, the order of the Louisiana Commission reducing the tariff on cotton seed and cotton seed products ought not to be enforced because a like percentage of reduction in all of the freight tariffs on complainant's entire line of railroad would

compel it to do business without compensation. Especially unfair, too, to the State of Louisiana, would the application of such a theory become when it is considered that the earnings per mile of complainant's railroad in Louisiana far exceed the earnings per mile of any other portion of complainant's road.

For and in support of this is complainant's own testimony. Mr. Tower has testified that the total mile of complainant's railroad is 1,848 miles, while its total mileage in Louisiana is 684 miles. He has testified, further, that, while the gross earnings of complainant for its entire line, for the year ending June 30, 1905, were \$12,300,580.97, and its net earnings were \$4,370,064.74, its gross earnings in Louisiana for the same period were \$4,806,564.60, and its net earnings \$2,044,641.72, thus showing that, although Louisiana has only about one-third of the total mileage of complainant's railroad, complainant's net earnings from its Louisiana business during the above period were nearly one-half of the total net earnings of complainant.

Again, for the year ending June 30, 1906, complainant's gross earnings were \$12,657,584.06, and its net earnings \$4,336,464.03. Its gross earnings during the same period in Louisiana were \$4,295,395.50, and its net earnings \$1,481,408.46, making the net earnings of complainant in Louisiana in excess of one-third of the total net earnings of complain-



ant's entire line of railroad, although the mileage in Louisiana is only about one-third of the entire mileage.

Mr. Redfield, too, in answering Cross-Interrogatory 32 (Record, page 68) propounded to him, says that for the year ending June 30, 1905, complainant's gross earnings in Texas per mile were \$7,478.50, and its net earnings \$2,274.37. Its gross earnings per mile in Louisiana, during the same period, were \$6,466.53, while its net earnings were \$2,230.19, thus showing that the cost of operating its railroads in Louisiana was \$1,011.97 per mile less than in Texas, with net earnings per mile of only \$44.18 less than its earnings in Texas. This makes a net difference in favor of that part of complainant's railroad in Louisiana, when compared with the remaining portion of it in Texas, of \$967.79 per mile, and establishing, beyond any doubt, that complainant operates its railroad in Louisiana at a much less cost than in Texas. (Record, page 68.)

Mr. L. S. Thorne, vice-president and general manager of appellant's railway (Record, page 91) states that the tonnage of that railroad in Louisiana has been constantly increasing since 1899 up to the time he gave his evidence in February, 1907, his testimony showing that this tonnage in 1899 was 2,606,980 tons, and in 1905, 4,156,701 tons, thereby giving proof of



the fact that there will be no falling off in the average net earnings per mile by complainant in the operation of its railroad in Louisiana.

The fallacy, therefore, of Mr. Tower's theory that the Louisiana Commission ought not to be permitted to reduce a tariff of rates applicable to a particular commodity, because, by reason of such reduction, the total receipts of complainant will be affected, is manifest.

## VII.

The value of the property of appellant in Louisiana operated by it in its railroad business has not been shown.

Mr. Tower has not attempted to show what is the present value of complainant's property in Louisiana, but he has given evidence in respect to the cost of construction of that railroad, which is an element of value to be considered, although not, in any sense, to be regarded as conclusive proof of present value.

He has testified that the total cost per mile, in the construction of the railroad, including equipment, up to June 30, 1906, was the sum of \$50,610.07, but he says the records of complainant "are not kept in such shape as to show the cost in Louisiana separate from that of the entire line." (Answer of E. W. Tower to Cross-Interrogatory 14. Pr. Record, page 78.) But this is simply the quotient of the sum of

the total outstanding stocks and bonds, divided by the entire mileage, state and interstate.

In thus stating his inability to give the cost of construction of plaintiff's railroad in Louisiana, the witness Tower was corroborated by Major Strong, the general agent of complainant in Louisiana, who swore that he was unable to give such cost. (McFarland, Pr. Record, page 227.)

What the Court is concerned with is not the cost of construction of complainant's railroad in Texas, but in Louisiana, since it is the latter cost which must govern in determining whether the tariff of charges fixed by the Louisiana Commission is a reasonable one, and, for that reason, the evidence of Mr. Tower is altogether valueless. Especially should this evidence be given little or no weight when it is considered that, up to June 30, 1906, the cost of construction of complainant's branch railroad from Cypress to Shreveport, a distance of eighty-one miles, including the purchase price of the old line of railroad already constructed from Cypress to Natchitoches, was \$1,652,856.65, or a total cost, including the price of the branch line already built from Cypress to Natchitoches, the purchase price of which is not given, of \$20,405.67 per mile (see answer of L. S. Thorne to Cross-Interrogatory 13, Record, page 90), and when it is considered that this branch road from Cypress to Shreveport was constructed at a time when, ac-

ording to the testimony of the witness Redfield, the cost of labor and materials and everything entering into the expense of operating a railroad had materially increased (answer of H. L. Redfield to Cross-Interrogatory 36, Record, page 69), the estimate given as to the probable cost of construction of the balance of complainant's railroad in Louisiana may well be discarded as entitled to no weight whatever.

The answer of Mr. Thorne to Cross-Interrogatory 4 is enlightening on this subject. He said:

"The money used for the construction and equipment of the branch lines was raised by issuing bonds to the extent of \$4,513,000. The additional sum of \$2,341,319.13 was paid for out of the earnings of the Texas & Pacific Railway Company, with the exception of \$167,330 premiums realized in sale of branch line bonds." (Record, page 89.)

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An established principle of rate-making is that what a railroad company is entitled to is "a fair return upon the value of that which it employs for the public convenience."

See *Smyth vs. Ames*, 169 U. S. 466, 547; *San Diego Land Co. vs. National City*, 174 U. S. 739, 755, 756; *Minnesota Rate Case*, 230 U. S. 352, 57 L. ed. 1511; *Missouri Rate Cases*, 230 U. S. 474, 57 L. ed. 1571.

## VIII

The record discloses insufficient proof of the value of appellant's property devoted to public use in Louisiana, upon which to declare the rates confiscatory.

The determination of value has always been attended with difficulties.

Even if we had been given the actual cost of construction of plaintiff's railroad, the Court would still be unable to determine the present value of that property, since no evidence whatever has been furnished by complainant of the depreciation in the value of its road, nor has a single witness testified that its present value is equal to the original cost of construction. The original cost of construction is not given nor is any attempt made to show the cost of reproduction new.

If we are to value complainant's entire property at the amount of its outstanding capital stock, now the sum of \$38,763,810, there would still be much difficulty in arriving at a true estimate of its value, since there is no evidence as to what proportion the entire subscription of stock bears to the Louisiana property.

We do not subscribe to the proposition that original cost of construction, less depreciation, determines value. All that we are contending for is that it should be considered as an element in arriving



at a correct conclusion as to what complainant's property is really worth, but, by itself, it is not conclusive of the true value.

In the case of *San Diego Land Co. vs. National City*, 174 U. S. 739, 757, this Honorable Court said:

"The contention of the appellant in the present case is that, in ascertaining what are just rates the Court should take into consideration the cost of its plant; the cost per annum of operating the plant, including interest paid on money borrowed and reasonably necessary to be used in constructing the same; the annual depreciation of the plant from natural causes resulting from its use; and a fair profit to the company over and above such charges for its services in supplying the water to consumers, either by way of interest on the money it has expended for the public use or upon some other fair and equitable basis. Undoubtedly, all these matters ought to be taken into consideration, and such weight be given them, when rates are being fixed, as, under all the circumstances, will be just to the company and to the public. The basis of calculation suggested by the appellant is, however, defective in not requiring the real value of the property and the fair value, in themselves, of the services rendered to be taken into consideration. What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public." (Our Gothic.)

In *San Diego vs. Jasper*, 189 U. S. 442, it was said:

"That is decided, and is decided against the



contention that you are to take the actual cost of the plant, annual depreciation, etc., and to allow a fair profit on that footing over and above expenses."

**Dow vs. Biedleman**, 125 U. S. 680; **Stanislaus County vs. San Joaquin & K.'s R. Co. & I Co.**, 192 U. S. 201, 204.

In **Allen vs. St. L., I. M. & S. Ry. Co.** (230 U. S. 552, 57 L. Ed. 1625), the valuation upon which the complainants based their claim that the rates fixed by the Legislature of Arkansas were confiscatory were the assessments made by the State Tax Commission multiplied by two. This valuation was rejected by the Court, and in concluding its opinion, the Court, speaking through Mr. Justice Hughes, said:

"It was not sufficient for the complainants to criticise the tests relied upon by the defendants, but in seeking to override the action of the State upon constitutional grounds, it was incumbent upon them to establish the invalidating facts by definite and convincing proof."

In the case of the **Sou. Pac. Co. vs. Campbell**, 330 U. S. 537, 57 L. Ed. 1610, the value upon which the complainant claimed it was entitled to a fair return in the State of Oregon from its rates was \$39,962,008.37, this being the sum representing the outstanding bonded indebtedness and an accumulated deficit on the capital stock of the company. It was averred

that for the fiscal year ending June 30, 1909, the total receipts were \$2,104,081.00, and the disbursements \$5,839,693.00. The bill was silent as to what was embraced in the aggregate expenditures, and the court below thought it fair to assume that the total disbursements as alleged, included not only the expenses of operation, but also interest on bonds and on open accounts. It was alleged that "the annual loss of interstate and intrastate business combined which would result if the order in question were enforced, would amount to \$156,072.48." The court below (189 Fed. 182) concluded that on this showing it could not be said, in advance of actual experience, that the rates fixed by the Commission would not afford a fair return upon the value of the property. The Supreme Court sustained this view.

In *Knott vs. Chicago, Burlington & Quincy Railroad Co.* (230 U. S. 474, 57 L. ed. 1571), (*The Missouri Rate Case*), various plans for estimating the value of complainant's properties were used. In considering the question as to whether the action of the State was confiscatory, the Court had before it the allegation of the complainants (which is made in the bill in this case), that the carriers were denied the just compensation to which they were entitled for the use of their property in public service. The freight Rate Acts of Missouri apply only to specific

commodities, just as in this case the order of the Railroad Commission of Louisiana, applies only to the specific commodities of cotton seed and cotton seed products. It was contended, however, that the intrastate business was already inadequate in the Missouri cases, and it is so contended here. This led the court to a consideration of the fair value of the property devoted to public use.

In seven of the nine cases presented, the court below found the value to be the valuation placed respectively on the properties by the State Assessing Board, for the purpose of taxation multiplied by three. In the case of two of the companies, the value as found was equal to twice the assessed valuation. The Supreme Court rejected these valuations, saying:

"On examining the evidence, however, we find it to be too general, and inconclusive to be regarded as sufficient proof to sustain the values as found." \* \* \*

"It is clear that testimony of this general character would be deemed insufficient to support a finding of confiscation, or to justify the annulment of the legislative acts of the State." \* \* \*

"Manifestly, a finding of confiscation could not be based on such a valuation in the absence of clear and convincing proof that the value actually existed, and that the different items of

property were estimated by correct methods and in accordance with proper criteria of value."

In the Minnesota Rate Case (Simpson vs. Shepard), 230 U. S. 352, 57 L. ed 1511, the dictum of the Court is:

"Where the business of the carrier is both interstate and intrastate, the question whether the scheme of maximum rates fixed by the State for intrastate transportation affords a fair return must be determined by considering separately the value of the property employed in the intrastate business and the compensation allowed in that business under the rates prescribed."

In the case of the Minneapolis and St. Louis Railway Company, the Master found "the present value of the entire property of the carrier, used in the public service in the State of Minnesota." This valuation was, as of June 30, 1906, and was made the basis of the cost of reproduction new. The master also made findings as to the original cost of construction, and as to the present value on the basis of cost of reproduction new, of the entire system of the carrier. The estimated value of the railroad's property within the State was divided between the freight and passenger business upon the relation of the gross revenue derived from each. The part of the total value which was thus assigned to the freight business



within the State was then divided between the interstate and the intrastate freight business on the basis of gross revenue, and a similar division was made between the interstate and the intrastate business of the property value assigned to the passenger department. In this way, the master found the value of the property used in intrastate transportation, freight and passenger, upon which he computed the net return received by the carrier.

After reviewing the evidence in detail and the findings of the master, the Court says:

"These are the results of the endeavor to apply the cost-of-production method in determining the value of the right of way. It is at once apparent that, so far as the estimate rests upon a supposed compulsory feature of the acquisition, it cannot be sustained." \* \* \*

"It is fundamental that the judicial power to declare legislative action invalid upon constitutional grounds is to be exercised only in clear cases. The constitutional invalidity must be manifest, and if it rests upon disputed questions of fact, the invalidating facts must be proved; and this is true of asserted value as of other facts." \* \* \*

"We are of the opinion that, on an issue of this character, involving the constitutional validity of State action, general estimates of the sort here submitted, with respect to a subject so intricate and important, should not be accepted as adequate proof to sustain a finding of confiscation. While accounts have been kept



so as to show the relative cost of interstate and intrastate business, giving returns of the traffic handled on through and local trains, and presenting data from which such extra costs as there may be, on intrastate business, may be suitably determined, it would appear to have been not impracticable to have had such accounts kept or statistics prepared, or at least during test periods, properly selected. It may be said that this would have been a very difficult matter, but the company, having assailed the constitutionality of the State's acts and orders, was bound to establish its case, and it was not entitled to rest on expressions of judgment when it had in its power to present accurate data which would permit the Court to draw the right conclusion."

*Minnesota Rate Case, supra.*

## IX.

The contention that because dividends have never been paid, the rates fixed by the Commission are unreasonable, is untenable when dividends have been earned and used for other purposes.

Complainant contends that the order of the Commission is unreasonable because it has never paid any "dividends" to its stockholders, and, therefore, no order of the Commission, reducing rates on its lines, ought to be countenanced; and that, so long as it is not paying dividends to stockholders, its revenues should not be decreased, notwithstanding the fact

that its charges for freight transportation may be excessive.

This is not a correct statement of the law, even if we should concede the correctness of complainant's premises, which we do not—that it has not paid dividends to its stockholders. It may be, and no doubt is, true that the stockholders have not received any dividends in cash, but it does not necessarily follow that a surplus has not been earned which might have been paid to them as dividends, but which has been otherwise used by complainant. The evidence shows that during the year 1901 and since then, up to June 30, 1906, a period of five years and a half, \$2,173,989.81 was paid out of the earnings, for branch lines, all of which are in the State of Louisiana except 33.11 miles of the T. S. & N. branch (answers of L. S. Thorne to Cross-Interrogatories 3 and 4, Record, page 89), and that, since it first issued bonds, in 1875, for railway construction, up to June 30, 1906, up to which time its last bond issue of \$4,513,000 was made, it had retired bonds issued by it to the amount of \$22,255,033.29, being the difference between its total bond issue of \$76,876,564.61 and \$54,621,531.32, the amount of its outstanding bonds in June, 1906. (Answers of L. S. Thorne to Cross-Interrogatory 3, Record, pages 88 and 89.)

Thus, it will be seen that complainant has reduced its bonded indebtedness, since the year 1875,

by the amount of \$22,255,033.29, and that it has, in addition, built 361.70 miles of new branch railroads in Louisiana, for which it has paid out of its earnings \$2,173,989.31, thus making an aggregate of \$24,429,022.60 in earnings applied to the building of new branch railroads and to the retirement of its outstanding bonded indebtedness, which might have been paid to the stockholders in dividends; and yet complainant has the temerity to use the fact of non-payment of cash dividends to stockholders as an argument against the reduction of excessive freight rates on cotton seed and cotton seed products.

In the light of this evidence the complainant's claim that it has not paid a dividend on its stock is explained by the showing that it has earned handsome dividends, which it has put back into the property, or with which it has purchased new properties instead of dividing the amount among its stockholders.

## X.

It does not follow that because certain oil mills have flourished under a voluntary rate adjustment the rates are reasonable, nor is evidence that certain mills have flourished of any value against a rate schedule adopted by the Railroad Commission of Louisiana for the purpose of making reasonable rates and preventing unjust discrimination.

The last witness whose evidence is relied on by complainant is W. F. Braggins, the general agent of the Texas and Pacific Railway in New Orleans. He gave it as his opinion that the present rates in effect on complainant's railway in Louisiana for the transportation of cotton seed and cotton seed products are reasonable, fair and just, but, when the reasons for his opinion are examined, the utter fallacy of his statements is apparent. He says that the present tariff is a fair, just and reasonable one because "the cotton seed oil mill industry has been built up, increased and expanded to all parts of the State on the line of the Texas and Pacific Railway Company, and these industries are prosperous and doing a good business," etc.; and, continuing, he says he does not consider the tariff which defendant, the Railroad Commission, proposes to put in force fair, just or reasonable, because "it will deprive the railway company of a large amount of revenue, it will change the conditions under which these industries in the interior have grown up and been established," and will "to some extent deprive these interior industries of the natural advantage of being located directly in the territory where the seed is grown, which natural advantages caused them to locate where they did." (Braggins, Record, page 95.)



Further on in his testimony this witness states that the tariff which the Commission proposes to establish will give the New Orleans mills an advantage over the mills in the interior of the State, and assigns this as an additional reason in support of his statement that the tariff ordered in force by the Commission is unfair and unreasonable. This witness is contradicted by several other witnesses in every statement thus made by him. It is true, as sworn to by him, that the cotton seed oil mill industry has been "built up, increased and expanded \* \* \* on the line of the Texas & Pacific Railway Company" in Louisiana, and because of this fact the witness would create the impression that this result has been brought about by reason of the existing tariff of rates for the transportation of cotton seed and cotton seed products over that railroad; but a careful examination of the evidence will show that a number of country oil mills have likewise been erected and put in operation on the lines of railway of other railroads in Louisiana during the same period, where the existing rates for the transportation of cotton seed are such as do not deprive the oil mills in New Orleans and Gretna from purchasing cotton seed from the same territory as that from which these country oil mills obtain their supply of seed, and from which they do actually obtain a part of such supply. It is



not true that all of the oil mills in the State have prospered and have been operating successfully. It is not true of the oil mills in New Orleans and Gretna, which, on the contrary, have been operating at great disadvantage, and in some instances at a loss, owing to the tariff of rates now in existence on the line of complainant's railroad, which have practically driven them from the territory from which they formerly drew a very considerable portion of their supply of cotton seed. (Hamilton, Record, pages 145, 152, 153, 159, 164, 165; Bachina, pages 230, 231; Drown, pages 232, 234, 235.)

However, be the facts as to the prosperity of the oil mills what they may, the reasonableness or unreasonableness of particular rates cannot be made to depend on them.

Equally unsupported by the evidence is the statement made by the witness Braggins that the tariff of charges which the Commission proposes to establish will deprive the interior mills of the natural advantage of being located in the cotton seed territory, for it has been amply shown that the reduction in the rates for the transportation of the products of such cotton seed will be sufficient compensation for any loss, if any, of cotton seed carried on the long haul to New Orleans and Gretna instead of to the local mills under the Commission's tariff, thereby maintaining a parity between the country mills and those

in New Orleans and Gretna. In support of the correctness of this statement we call attention to the fact that not only are the oil mills in New Orleans and Gretna advocating the tariff of the Commission, but a number of others, located in the country parishes of Louisiana, so that there is no need of this remarkable solicitude for the welfare of the country oil mills manifested by complainant.

In fact, the proceedings before the Commission which resulted in the adoption of Order 484, were instituted by the filing of a complaint against the unreasonableness of the existing rates by the Longbridge Cotton Oil Company, whose mill is located in the center of the State.

## XI.

The existing rates on cotton seed and cotton seed products are burdensome, unfair and unreasonable.

While appellant absolutely failed to sustain the allegations of its bill of complaint by convincing proof, still the appellee's proof conclusively shows that the tariff of rates on cotton seed and cotton seed products on the Texas & Pacific Railway in Louisiana is unreasonably and unjustly discriminatory.

First.—Because such tariff of rates in effect for the transportation in Louisiana of cotton seed and cotton seed products by complainant is unreasonable in itself.

**Second.**—Because it operates as a discrimination against the cotton seed oil mills in New Orleans and Gretna by depriving them of the opportunity of buying cotton seed in the territory where, formerly, they made their purchases of seed along the line of complainant's railroad, which discrimination it is made the duty of defendant, by Article 284 of the Constitution of the State of Louisiana, to prevent.

**Third.**—Because, by depriving the cotton seed oil mills in New Orleans and Gretna from purchasing cotton seed in that territory, the tariff of rates now in effect has resulted injuriously to the producers and sellers of cotton seed by depriving them of the competition which otherwise they would have if the New Orleans and Gretna mills were allowed, under equitable freight rates, to enter the markets in the country as active buyers.

The charges made by complainant for the hauling of cotton seed work an absolute discrimination against the cotton seed oil mills of New Orleans and Gretna in favor of the country mills in the territory tributary to complainant's railroad, and this discrimination will be terminated by putting in force the order of the Commission.

The tariff which the Railroad Commission proposes to put in will result in competition between the cotton seed oil mills in New Orleans and those in the country in bidding for cotton seed, which will enable

the cotton seed growers to obtain a better price for such seed and the oil mills in New Orleans and Gretna obtaining more seed.

Recently, discussing this principle, the Interstate Commerce Commission said, through Commissioner Harlan:

"The principle is a plain one. A carrier's duty is to serve the whole public and to do this upon reasonable terms and without discrimination. Fundamentally, it may not, as a public servant, serve one community at the expense of another or build a rate wall around one point to advance the interests of a competing point. Nor has the Commission ever sanctioned any schedule of rates constructed in pursuance of any such policy or having any such consequence. In the carrier's interest we have sanctioned some violations of the long-and-short-haul provision of the act. In particular cases we have recognized it as the natural right of a carrier to adjust its rates on a lower basis than it would otherwise establish, in order to meet competition over other routes and from other quarters and thus secure a traffic that would be lost to it under higher rates. We have sanctioned such adjustments rather in the interest of the carrier than of the shipper. But we recall no case in which the Commission has recognized the right of a carrier to fix its rates to or from a given point on a higher level than they otherwise should be, in order to prevent one community from competing with another, or to keep the products of one community out of a territory, the wants of which may be fully supplied by another community.



In our judgment the right to adjust rates on any such theory should not rest either in the carriers or in this Commission. The rails of a common carrier form a public highway over which the commerce of any community should be able freely to move on rates that are reasonable, all things considered, regardless of the consequences of its competition upon any other community." (*Indianapolis Freight Bureau vs. C. C. & St. L. Ry. Co.*, 26 ICC 53, 59.)

It was abundantly shown by a comparison of complainant's rates with those of other carriers in cotton seed producing states, filed by Mr. Barrow, that the former are far above the average and above rates charged by other lines entering New Orleans.

The master disregarded this comparison entirely;

"In determining whether rates are just and reasonable in themselves, a comparison may be made of the particular rates accepted elsewhere for similar services." (*I. C. Com. vs. E. T. Va. & Ga. Ry. Co.*, 85 Fed. Rep. 107.)

The value of comparisons between rates on the question of reasonableness was clearly recognized in the case of *I. C. Com. vs. Southern Ry.*, 117 F. R. 745, affirmed in 122 Fed. Rep. 800.

## XII.

Discriminations are prevented by the adoption of mileage rates, and rates made upon such a basis cannot be said to favor one locality as against another.



Appellants contend that the rates prescribed by the Commission's Order No. 484, tend to equalize opportunities and natural advantages enjoyed by the country oil mills with the natural disadvantages against the mills located at New Orleans. They say that the country mills, located as they are, in the midst of the cotton producing territory, should enjoy lower rates than apply to New Orleans, which is almost 100 miles from the cotton producing territory.

This contention is not disputed, but we cannot see its force in this case, because the Commission's order, being on a mileage basis, necessarily affords cheaper rates to the country oil mills, they being located near the cotton seed shipping points, than apply to New Orleans, a long distance from such points. Under the Commission's tariff, the rates on cotton seed advance as the mileage increases, until a maximum of 15 cents per 100 pounds is reached for a distance of 200 miles and over. As applied to cotton seed products, (except oil and tank bottoms), the rates advance with the mileage, until a maximum rate of 8 cents is reached for 200 miles and over, and on oil and tank bottoms, the rates advance as the mileage increases, until a maximum rate of 17 cents is reached for distances over 285 miles. These rates apply between all points on the Texas and Pacific Railway. No matter what its location, the mill buy-

ing cotton seed in Louisiana, pays the same rate for the same distance. It is only where special rates are made to apply between special points that the claim can be successfully made that the rate attacked seeks to overcome natural opportunities or advantages.

The Commission's rates place all shippers on an equality, destroy the discriminations in the voluntary rates established by the carrier, and thus discharge the obligation placed upon it by law of requiring the carrier to afford all shippers the use of its facilities upon equal terms and conditions.

It is a scheme of rate-making adopted by the Commission, after an exhaustive investigation, resting entirely within its discretionary powers, derived from the grant of power in the Constitution of Louisiana.

It has already been sufficiently shown, by the testimony of a number of the Commission's witnesses, that the cotton seed oil mills in New Orleans and Gretna have, by reason of the excessive high tariff on cotton seed to New Orleans and Gretna from the territory through which complainant's railroad runs, been driven out of that territory, since they can no longer buy there, and that a discrimination against these mills in favor of other mills in that immediate section has resulted, while, at the same time, depriving the producer of the competition between these mills which otherwise would exist as purchasers of

such seed, and the consequent increase in the price of same which must inevitably result from such competition.

### XIII.

The evidence shows that the tariff of rates now in effect are in some special instances lower than the rates fixed by the Commission. This results in unjust discrimination, which is eliminated by Order No. 484. Former rates, which had been in effect for years, were also advanced by the carrier.

It has been shown by the testimony of a number of witnesses that, previous to the putting into effect, by complainant, of the tariff now in force, and which defendant set aside in and by its Order No. 484, complainant had been invariably charging for the transportation of such commodities much less than it now claims the right to charge, and less than the rates which it is authorized to charge under the tariff established by defendant in its Order No. 484, and this in spite of the fact that, at the time these lower charges were made, the production of cotton seed along its line of railroad was much less than at the time it put in the higher tariff. In support of this statement we beg to call attention to the following evidence:—

First.—That of George C. Bradshaw, who, at the time he testified, had been in the employ of the Standard Cotton Seed Oil Company for sixteen years.

He testified that, on the Port Allen branch of the complainant's railroad, the rate in force under the tariff which complainant claims the right to have enforced is about twice as much as his company formerly paid. He was asked:

"On the Port Allen branch, how does the rate now in force to New Orleans compare with the rate you had previously?"

In reply he said:

"It is about double. We used to pay \$1.50 a ton from all stations on that Port Allen branch."  
(Bradshaw, Record, page 170.)

Again, when asked if there had been a substantial movement of cotton seed to New Orleans from territory through which complainant's railroad runs when this rate of \$1.50 per ton on cotton seed was in effect, he answered:

"We would get quantities of seed from that territory; yes, sir."

(Bradshaw, Record, page 194. See, also, the testimony of this witness at pages 195 and 196.)

Mr. George C. Hauser, assistant manager of the Southern Cotton Oil Company, testified that previous to the time when complainant put in a rate for the transportation of cotton seed which he could not pay and which forced him to abandon that territory, the rate at which complainant had carried cotton seed to New Orleans and Gretna was \$1.50 per ton. (Hau-



ser, pages 200, 205.) (Testimony of William C. Ermon, who is connected with the Southern Cotton Oil Company in its transportation department, Ermon Pr. Record 222, 223.)

Charles J. Bachina, also a witness, connected with the Standard Cotton Seed Oil Company as its purchasing agent, testified that the rate formerly charged by complainant for transporting cotton seed to New Orleans and Gretna from certain points on its line was \$1.50 a ton, it being the same territory from which the charge is now \$3 per ton (Bachina, Record, page 231 et seq.); and he is corroborated by Captain Charles W. Drown, who testified that the freight rate formerly charged by complainant to carry a ton of cotton seed to New Orleans from New Roads was \$1.50 per ton, and that the present rate charged by it is \$3 per ton. (Drown, Record, page 235.)

#### XIV.

##### **The report of the special master.**

In the face of evidence so overwhelmingly in favor of defendant, the special master found in favor of complainant, and reported against the maintenance of the Railroad Commission's order.

It may be well, therefore, to examine that report, and to call attention to the errors committed by the special master, which, in our judgment, are so glaring as to warrant its rejection by this Honorable



Court, as was done by the Circuit Court and the Circuit Court of Appeals.

We have previously discussed the master's error in finding that the rates fixed by the Commission were not presumably reasonable.

The master, in his finding in respect to the value of complainant's railroad and the return of revenue derived by it from this property for the year ending June 30, 1906, is equally in error. His finding as to the value of complainant's railroad is utterly without foundation for its support. He has found that the cost of building complainant's entire railroad exceeded \$50,000 per mile, finding that the cost of this entire road was \$93,385,341.32, although he was utterly without right to do more than find what it cost to build that part of its line of railroad in Louisiana, and upon which point we have no evidence in the record except as to the cost of that part of complainant's railroad from Cypress to Shreveport. Mr. L. S. Thorne, the vice-president and manager of complainant's railroad, testified that the branch is 81.2 miles long and cost \$1,652,856.65 to construct (Record, page 90), making a cost per mile of only \$20,355.37, and of certain branch lines built by complainant in Louisiana, which Mr. Thorne testified have an aggregate length of 361.7 miles, and which cost \$6,854,319.13 (Record, page 89), making a total cost per mile of \$18,950.29.

Thus, it will be seen that the cost of railroad building in Louisiana by complainant has been far below the amount at which the master has fixed it, and that, instead of its being \$50,000 per mile, as he has found, it has been, in the instance of the line from Shreveport to Cypress, only a little over \$20,000 per mile, and, where branch lines have been built, much less than \$20,000 per mile. The testimony of Mr. Thorne, the only witness who has testified on the subject, has not informed the court as to the cost of constructing complainant's main line in Louisiana. When asked what was the actual cost of such construction, he replied that, from the records kept in the auditor's office, "it cost about the sum of \$50,192 per mile, including a portion of the equipment and rolling-stock." (Record, page 89). As Mr. Thorne did not state what this "portion of equipment and rolling stock" cost, it has not been possible to determine what portion of the \$50,192 represents cost of construction of its railroad. If we accept his figures, showing the cost of the line built from Shreveport to Cypress and the branch lines built throughout the State, as giving the exact cost of construction in Louisiana, the cost of building appellant's railroad was only a little over \$20,000 a mile. He then finds (Record, page 35) "the value of the entire road to be ninety-three million, three

hundred and eighty-five thousand, three hundred and forty-one and 32-100 dollars (\$93,385,341.32), and that the net income for the year ending June 30, 1906, was \$4,336,464.03. Upon this false premises as to the value of appellant's railroad and its net earnings, the master proceeds to make an estimate of its income, finds that the return on the investment<sup>(1)</sup> thus erroneously determined, was 4.6 per cent. (The original report filed by the master found the return to be 46 per cent, which he afterwards admitted to be an error. Record, page 49.)

The weight to be given the master's report should be determined by its numerous errors or vital points.

Again, the master is in error when he makes the statement "that no dividend on stock has ever been paid." (Record, page 35.)

He overlooks entirely the fact that complainant had built its line from Cypress to Shreveport at a cost, including the purchase price of the old line from Cypress to Natchitoches of \$1,652,856.65, and of branch lines built at a cost of \$6,854,319.13, up to June 30, 1906, of \$8,507,175.78, and that this construction was all paid for out of the earnings of complainant, except to the extent of a bond issue of \$4,513,000. Here we have, then, proof of the fact that complainant had, during a few years previous and up to June 30, 1906, paid from its earnings for new railroad con-

struction in Louisiana the sum of \$3,994,175.78, and yet the master announces that complainant's entire income "is needed to meet the interest on the bonded indebtedness," in spite of the fact that it had accumulated out of its earnings and placed to capital account an amount of \$3,994,175.78 in new railroads upon which it would claim that dividends should be paid.

"What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

(*Smythe vs. Ames*, 169 U. S. 466.)

Dividends may never be received in money by stockholders if the earnings of a railroad are constantly taken for the purpose of building new lines of railroad; but, all the same, such new lines of road represent dividends which they might have received in money, but which have been used in acquiring new property and thereby increasing the value of their stock, and the earning capacity of their railroad. Appellant had the undoubted right, with the consent of its stockholders, to use its earnings in the acquisition of new lines of railroad instead of paying the same out to stockholders in money as divi-



dends, but it cannot then successfully attack an order put in by the Commission on the ground that its stockholders are receiving no dividends, for, as said by the Supreme Court of the United States in the case of **Railroad Commission vs. Cumberland Telephone & Telegraph Company**, 212 U. S. 424, 425:

"It certainly was not proper for the complainant to take the money, or any portion of it, which it received as a result of the rates under which it was operating, and so to use it, or any part of it, as to permit the company to add to its capital account, upon which it was paying dividends to shareholders."

We do not deem it necessary to pursue further this argument against the manifestly erroneous report of the special master, for all of his contentions have been completely annihilated by the recent State Rate Cases decided by this Great Court.

#### XV.

The power of the Railroad Commission of Louisiana to make reasonable and just rates is not in doubt. That it has acted within its vested powers is borne out by a long list of decisions in State Rate Cases.

The Railroad Commission of Louisiana derives its powers from the Constitution of Louisiana. It originated with the Constitution of 1898, and the Article of that Constitution, defining the powers and duties of the Commission, is as follows:



"Art. 284. The power and authority is hereby vested in the Commission, and it is hereby made its duty, to adopt, change or make reasonable and just rates, charges and regulations, to govern and regulate railroad, steamboat and other water craft, and sleeping car, freight and passenger tariffs and service, express rates, and telephone and telegraph charges, to correct abuses, and prevent unjust discrimination and extortion in the rates for the same, on the different railroads, steamboat and other water craft, sleeping car, express, telephone and telegraph lines of this State, and to prevent such companies from charging any greater compensation in the aggregate for the like kind of property or passengers, or messages, for a shorter than a longer distance over the same line, unless authorized by the Commission to do so in special cases; to require all railroads to build and maintain suitable depots, switches and appurtenances, wherever the same are reasonably necessary at stations, and to inspect railroads and to require them to keep their tracks and bridges in a safe condition, and to fix and adjust rates between branch or short lines and the great trunk lines with which they connect, and to enforce the same by having the penalties hereby prescribed inflicted through the proper courts having jurisdiction.

"The Commission shall have power to adopt and enforce such reasonable rules, regulations, and modes of procedure, as it may deem proper for the discharge of its duties, and to hear and determine complaints that may be made against the classification or rates it may establish, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts, required or authorized by these provisions. They shall have power to summon and compel the attendance of witnesses, to swear witnesses and to compel the production of books and papers, to take testimony under commission, and to punish for contempt, as fully as is provided by law for the district courts." (Constitution of Louisiana, 1898.)

## XVI.

Having acted within its powers, the orders of the Railroad Commission of Louisiana will not be disturbed by the courts unless there is manifest error.

In speaking for the Court in the Minnesota Rate Case, Mr. Justice Hughes said:

"The rate-making power is a legislative power and necessarily implies a range of legislative discretion. We do not sit as a board of revision to substitute our judgment for that of the legislature, or of the Commission lawfully constituted

by it, as to matters within the province of either."

*Simpson vs. Shepard*, 230 U. S. 352 (433), 57 L. ed. 1511 (1555.)

This language compares perfectly with that used by the Supreme Court of Louisiana in the case of *Morgan's Louisiana & Texas R. R. & S. S. Co. vs. the Railroad Commission of Louisiana*, *supra.*, Nichols, Chief Justice, speaking for the court:

"It was not intended that we should substitute our judgment for that of the Commission every time there is a dispute touching the particular place on the line of the railroad where it would be best for the public interest that a station or a depot should be placed. To come successfully before this Court, the appellant must be able to point out some legal right of its own which has been infringed upon."

The power of the state, through its agency, the Railroad Commission, to establish reasonable intrastate rates is no longer in doubt.

*Shepard vs. Simpson*, 230 U. S. 352, 57 L. ed. 1511; *Allen vs. St. L., I. M. & S.*, 230 U. S. 553, 57 L. ed. 1625; *Knott et al. vs. C., B. & Q. R. et al.*, 330 U. S. 474, 57 L. ed. 1571.

The states have always had the power to regulate commerce within their boundaries, although such commerce may be carried on by agencies also engaged in interstate commerce.

*Shepard vs. Simpson*, *supra.*

Discriminations are opposed to the foundation of government, and their existence has had more to do with the creation of state railroad commissions and the Interstate Commerce Commission than any other single cause. The Railroad Commission of Louisiana was created to make reasonable rates and to prevent unjust discrimination, and its powers in this respect are as broad, in so far as intrastate rates are concerned, as are the powers of the Interstate Commerce Commission over interstate rates.

In *New York, New Haven & Hartford Railroad Company vs. Interstate Commerce Commission*, 200 U. S. 391, Mr. Justice White (now Chief Justice), in discussing the meaning of discrimination provided against by the Act to Regulate Commerce, said:

"It cannot be challenged that the great purpose of the Act to Regulate Commerce, whilst seeking to prevent unjust and unreasonable rates, was to secure equality of rates as to all, and to destroy favoritism. \* \* \* To this extent, and for these purposes, the statute was remedial, and is, therefore, entitled to receive that interpretation which reasonably accomplishes the great public purpose which it was enacted to subserve."

In *Alabama & Vicksburg Ry. Co. vs. Mississippi Railroad Commission*, 203 U. S. 496, the Court held (page 500) that whenever, by reason of any pretense, some shippers are given a lower local rate than oth-



ers, a railroad commission "is justified in making that rate for all," and that "it is not bound to inquire whether it furnishes adequate return to the railway company, for the State may insist upon equality, to be enforced upon the same conditions against all who perform a public or quasi-public service."

This language of the Court is particularly appropriate when applied to the facts of this case, and especially to the rate put in by plaintiff for the transportation of cotton seed to Cinclare, a point on appellant's railway, about 90 miles from New Orleans.

In the case of *Seaboard Air Line Railway vs. Florida*, 203 U. S. 261, the Court (page 269) said that, even if the receipts by the railroad company

"from local-freight rates were insufficient to meet what could properly be cast as a burden upon that business, such insufficiency would not justify it in an inequality of rates between different parts of the State, in one part too high and in the other too low."

In *Minneapolis & St. Louis R. R. Co. vs. Minnesota*, 186 U. S. 257, the Court held that a tariff of charges fixed by the Railroad Commission for coal in earload lots is not shown to be unreasonable merely by establishing the fact that, if such tariff should be applied to all freight, the road would not pay its operating expenses, since it might well be that the rates upon other articles of merchandise trans-



ported, not disturbed by the action of the Commission, might be sufficient to earn a large profit to the railroad, although it might earn little or nothing upon the coal carried in carload lots.

Since the rates fixed by the Commission have never been put into effect, it cannot be determined in advance of a fair trial what effect they would have upon the company's revenue.

In the case of **Tilley vs. Savannah, Florida & Western Railroad Company et al.**, 5 Fed. Rep. 641, where there was an honest difference of opinion between the Railroad Commissioners of Georgia and the officers of a railroad company as to whether the putting into effect of a certain tariff would not deprive the railroad of a fair revenue or return from the property operated, the Circuit Court of the Southern District of Georgia, through Judge Woods, said:

"Which view is the correct one it is impossible to decide from the evidence submitted. There is, however, a conclusive way, and it seems to me it is the only one by which this controversy can be settled, and that is by experiment."

In the case of the **City of Knoxville vs. Knoxville Water Company**, 212 U. S. 2, the Court realized that it was difficult to determine whether an ordinance of Knoxville, fixing maximum rates to be charged for water by the defendant company, was or was not an unreasonable ordinance in the sense that, if enforced,

it would deprive defendant of a sufficient compensation in the operation of its property, but it, nevertheless, dismissed complainant's bill, and, in so doing, said, at page 18:

"If hereafter it shall appear, under the actual operation of the ordinance, that the returns allowed by it operate as a confiscation of property, nothing in this judgment will prevent another application to the Courts of the United States or to the Courts of the State of Tennessee. But, as the case now stands, there is no such certainty that the rates prescribed will necessarily have the effect of denying to the company such a return as would avoid confiscation."

And it, accordingly, reversed the decree of the lower Court, and ordered the case "remanded to the Court below with directions to dismiss the bill without prejudice."

Again, in the case of *Wilcox vs. Consolidated Gas Co.*, *supra.*, the Court said, at page 54:

"Upon a careful consideration of the case before us, we are of the opinion that the complainant has failed to sustain the burden cast upon it of showing, beyond any just or fair doubt, that the acts of the Legislature of the State of New York are in fact confiscatory. It may possibly be, however, that a practical experience of the effect of the acts by actual operation under them might prevent the complainant from obtaining a fair return, as already described, and in that event complainant ought to have the opportunity of again presenting its case to the Court.

To that end, we reverse the decree, with directions to dismiss the bill without prejudice."

The rates could have been put into effect, and thus actual results could have been ascertained without impairing the carrier's right to contest them, if, under changed conditions, they were found to be confiscatory. *Allen vs. St. L., I. M. & S. R. Co.*, 230 U. S. 552, 57 L. ed. 1625.

In the instance case we feel quite sure that not only has complainant not sustained the burden of proof cast on it of showing that the tariff rates as fixed by defendant in its Order No. 484 is unreasonable, but that defendant has shown these rates to be fair, just and reasonable and compensatory, and we, therefore, submit that the tariff of rates as thus ordered to be put in should be declared to be such a tariff as the defendant Commission had the right to put.

While the cost of this particular service, the profit derived, and the value of the particular property employed, are left to conjecture, the railway experts claimed, as one reason why their own rate was just and fair, that it permitted a free movement of this traffic. True, the movement was free enough to near-by mills in the country, but the testimony shows conclusively that the movement for any considerable distance has been stopped altogether since

the New Roads branch was shut off from New Orleans.

The usual idea among railroad witnesses, that railroad officials are better able to make a reasonable rate than railroad commissioners, ran through complainant's testimony in this case. But the contention has before arisen, been discussed and disposed of.

"The reasonableness of any given rate is a question of fact."

L. & N. R. Co. vs. Behlmer, 175 U. S. 648.

In E. T. V. & Ga. R. Co. vs. I. C. Commission, 99 F. R. 64, it was said:

"It has been suggested that traffic managers are much better able, by reason of their knowledge and experience, to fix rates \* \* \* than the Courts. This cannot be conceded so far as it relates to the Interstate Commerce Commission, which, by reason of the experience of its members in this kind of controversy, and their opportunity for full information, is, in a sense, an expert tribunal."

This language is just as applicable to the State Commission, and was evidently so considered by the Supreme Court in the Telephone Rate case (212 U. S. 424, *supra*), where, without any statutory declaration to that effect, it was held the orders of the Commission were presumptively correct.

In Tift vs. Southern Ry., 138 F. R. 753, affirmed by the Court of Appeals and the Supreme Court, it was said:



**"Explicit law, the settled policy of the Government, the practical principles of reason and justice, require that, save for controlling reasons of law or fact, the National Courts should not discredit or disparage the conclusions of the Interstate Commerce Commission."**

It is believed this observation is equally applicable to the conclusions of a State Railroad Commission when acting under a law whose object is to secure justice and prevent discrimination.

It seems beyond further question that the courts will not substitute their judgment for that of a state railroad commission upon such questions as the conditions of traffic, the adjustment of rates with respect to the different commodities transported, and the appropriate basis for classification, where the commission's action was not of such an arbitrary character as to constitute an abuse of power.

**L. & N. R. R. Co. vs. Railroad Commission of Ky., No. 23, October Term, 1913, decided December 1, 1913.**

**Sou. Pac. Co. vs. Campbell (R. R. Com. of Oregon), 230 U. S. 537, 57 L. ed. 1610.**

In concluding its opinion in the case of **St. Louis & S. F. R. Co. vs. Gill**, 156 U. S. 649 (668), 39 L. ed. 567 (573), the Court, through Mr. Justice Shiras, says:

**"and, upon the whole, we do not feel warranted, by all that appears in this record, in declaring**



invalid an act of the Legislature of Arkansas, which on its fact appears to be a legitimate exercise of power, and which has not been shown by clear and satisfactory evidence, to operate unjustly and unreasonably, in a constitutional sense, against the plaintiff in error."

The Court is again reminded of the fact that the amount of net earnings shown in Louisiana is the result after deducting large sums for betterments and permanent improvements. The propriety of charging these sums to operating expenses, and thereby reducing the net earnings, is not a very material inquiry, because it is not presently necessary to duplicate the improvements so made, and because the improvements, so made from the contribution of shippers, must tend to cheapen the cost of transportation or add to future earnings. That there is no attempt to separate the state and interstate business of the carrier. That the value of the property used is not shown.

The proof offered by complainant in support of its bill was of a general character, leaving undeveloped the essential elements upon which a successful attack upon state-made rates must depend.

"It was not sufficient for the complainant to criticise the tests relied upon by the defendants, but in seeking to override the action of the state upon constitutional grounds it was incumbent upon them to establish the invalidating facts by

definite and convincing proof." (Allen vs. St. L., I. M. & S. Ry. Co., supra.)

## XVII.

### Conclusion.

We think it apparent that the conclusions reached by the lower courts were correct. Judge Foster, of the Fifth Circuit Court for the Eastern District of Louisiana, in rejecting the master's report and reversing his findings, said (Printed Record, 290-292):

"As I understand the jurisprudence, it is well settled that in the fixing of rates by legislative authority, on a single commodity, the expense of rendering the particular service must first be considered and the rates so graded as to pay this cost and contribute a just proportion to a fair and reasonable return on the investment."

But he adds:

"No effort was made by complainant to show the cost of the particular service in question, to-wit, the movement, of cotton seed and cotton seed products. And complainant has also failed to show its investment in Louisiana, except to fix the amount of its outstanding stock and bonds, which should not be taken as conclusive proof."

"As against this there is evidence tending to show that complainant has constructed a branch railroad in Louisiana from Cypress to Shreveport, a distance of eighty-one miles, at an average cost of \$20,405 per mile; and it is shown that its road is returned for taxation at \$10,000.00 per

mile, for its main line, and \$5,000.00 per mile for its branches."

The opinion of the Circuit Court does not seem to have been reported, but is reproduced in full in the opinion of the Circuit Court of Appeals, 192 Fed. Rep. 280 (Printed Record, 299-305). The Circuit Court of Appeals in affirming the decree of the Circuit Court reviewed the facts and sustained all of the contentions of the lower court.

We, therefore, come into this Court fortified with concurrent opinions of the two lower courts. The errors assigned here are a reproduction of the errors assigned in the Circuit Court of Appeals. There is nothing in the opinions of either of the two lower courts which would justify this Court in reversing their decrees.

It is the settled jurisprudence of this Court that concurrence of findings of fact by two lower courts in a suit in equity will not be disturbed by the Federal Supreme Court on appeal, unless clearly erroneous.

Dun vs. Lumbermen's Credit Ass'n., 209 U. S. 20, 28 Sup. Ct. Rep. 335, 53 L. Ed. 348; El Paso & S. N. R. Co. vs. Wizard, 211 U. S. 608, 29 Sup. Ct. Rep. 210; Chicago Junction R. Co. vs. King, 222 U. S. 222, 32 Sup. Ct. Rep. 79, 56 L. Ed. 173; Deslions vs. La. Compagnie General Transatlantique, 210

U. S. 95, 28 Supt. Ct. Rep. 664, 52 L. Ed. 973; *Page vs. Rogers*, 211 U. S. 575, 29 Sup. Ct. Rep. 159, 52 L. Ed. 332; *Meritlat vs. Hensey*, 221 U. S. 333, 36 L. R. A. (N. 5) 370, 31 Sup. Ct. Rep. 575, 55 L. Ed. 758; *Ramford Chem. Works vs. Hygienic Chemical Co.*, 215 U. S. 156, 30 Sup. Ct. Rep. 45, 54 L. Ed. 137; *Scribner vs. Strauss*, 210 U. S. 352, 28 Sup. Ct. Rep. 735, 52 L. Ed. 1094; *J. J. McCaskill Co. vs. U. S.*, 216 U. S. 504, 30 Sup. Ct. Rep. 386, 54 L. Ed. 590.

To deny the right of the Railroad Commission of Louisiana, the appellee, to enforce the rates on cotton seed and cotton seed products which are established by its Order No. 484, would be to strip the Commission of its power to make just and reasonable rates. The principles upon which the Court sustained the rate orders of Minnesota, Missouri, Oregon, Arkansas, West Virginia and Kentucky, all decided within the past year, are present in this case, casting their weight in favor of the order of the Railroad Commission of Louisiana.

Respectfully submitted,

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